January 25 1872
Owen - ~~Hunt~~ Thomas 2
20 to 2 20 pm 1
~~Hubbard~~ - 20 to 2
Huntley - Ingersol 20 to 1

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

Suit in personam

No. ~~287.~~ 89

THE NORWICH AND NEW YORK TRANSPORTATION COMPANY, APPELLANTS,

VS.

WILLIAM A. WRIGHT, SAMUEL HEMINGWAY, WILLIAM BETSWORTH, WILLIAM U. ROBERTSON, ALBERT V. ELDRIDGE, HORATIO NICHOLS, ROBERT FRANCIS, VAN BRUNT AND SLAIGHT, DAN. SMITH, J. LUDINGTON & CO.

Act 3 March 1851

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

8

FILED NOVEMBER 12, 1870.

24 How 1
Feb 10 1872
Reversed
Jus Bradley

SUPREME COURT OF THE UNITED STATES.

No. 287.

THE NORWICH AND NEW YORK TRANSPORTATION COMPANY, APPELLANTS,

VS.

WILLIAM A. WRIGHT, SAMUEL HEMINGWAY, WILLIAM BETSWORTH, WILLIAM U. ROBERTSON, ALBERT V. ELDRIDGE, HOR[illegible]TIO NICHOLS, ROBERT FRANCIS, VAN BRUNT AND SLAIGHT, DAN. SMITH, J. LUDINGTON & CO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

INDEX.

	Original.	Print.
Clerk's certificate	*a*	1
Monition	1	1
Stipulation	4	2
Record of judgment	5	3
Libel	6	3
Exceptions to libel	10	5
Amended libel	12	6
Answer to libel	16	9
Judgment for damages and to refer to commissioner	21	12
Report of commissioner	21	12
Final decree	23	13
Appeal	24	14
Application for permission to prove value of steamer and of the interest of respondents therein	24	14

TESTIMONY FOR LIBELLANTS.

	Original.	Print.
1. John E. Bowns, direct	26	15
cross-examination	30	17
re-direct	32	18
2. Peter Albert, direct	33	19
recalled	48	28
3. William A. Wright, direct	36	21
cross-examination	48	28
recalled	110	66
4. Daniel Patience, direct	58	34
cross-examination	61	36

	Original.	Print.
5. Peter Farn's deposition	62	37
cross-examination	69	41
re-direct	74	44
6. George Mullenhoff's deposition	75	45
cross-examination	79	47
re-direct	84	50
re-cross-examination	85	51
7. Harry Rodick's deposition	85	51
cross-examination	87	52
re-direct	89	53
8. Gustave Peter's deposition	90	54
cross-examination	91	55
re-direct	97	58
9. Rufus E. Hine's deposition	98	59
cross-examination	101	61
10. Minor F. Wright	103	62
cross-examination	105	63
11. William R. Merrihugh	110	66
cross-examination	112	67

TESTIMONY FOR THE DEFENDANTS.

	Original.	Print.
1. Henry L. Tracy	113	68
cross-examination	119	71
re-direct	125	75
2. George C. Crocker	126	76
cross-examination	130	78
re-direct	133	80
3. William D. Carpenter	134	81
cross-examination	137	83
re-direct and re-cross	142	86
4. George Hibbard	143	86
cross-examination	145	88
re-direct	146	88
5. George F. Nye	147	89
cross-examination	152	92
6. John H. Nickerson	155	94
cross-examination	158	96
7. Isaac Gifford	159	97
cross-examination	161	98
8. Jared Lockwood	162	98
cross-examination	165	100
9. Joseph A. Gardner	167	101
cross-examination	169	103
10. Capt. Daniel B. Sturgis	169	103
cross-examination	176	107
re-direct	178	108
re-cross	179	109
11. Martin S. Person's deposition	180	109
cross-examination	183	111
re-direct	184	112
re-cross	185	112
12. Joseph W. Nye's deposition	185	112
cross-examination	187	114
re-direct	193	117

	Original.	Print.
13. James A. Howard's deposition	193	117
cross-examination	196	119
re-direct	198	120
14. Charles B. Smith's deposition	198	120
cross-examination	200	121
re-direct	203	123
15. David Crowley's deposition	203	123
cross-examination	205	124

REBUTTING PROOF.

	Original.	Print.
Capt. William A. Wright, recalled	205	124
cross-examination	207	125
Capt. George F. Nye, recalled	208	126
Judge Shipman's opinion	210	127
Motion of appeal	218	132
Authentication of record of district court	219	132
Decree of circuit court	220	132
Appeal from circuit court	222	133
Bond on appeal	223	133
Justification of sureties	224	134
Approval of bond and allowance of appeal	225	134
Petition of appeal	226	135

a UNITED STATES OF AMERICA,
District of Connecticut, ss:

I, Loren P. Waldo, clerk of the circuit court of the United States of America for the district of Connecticut, in the second circuit, do hereby certify that the following pages, numbered from 1 to 230 inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of the Norwich and New York Transportation Company, claimants, against William A. Wright et als., libellants, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of said court to be hereunto affixed, at the city of Hartford, in the district of Connecticut, in the second circuit, this 15th day of October, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the said United States the ninety-fifth.

[SEAL.] LOREN P. WALDO, *Clerk.*

1 UNITED STATES OF AMERICA,
District of Connecticut, ss:

District court of the United States of America, within and for the district of Connecticut, February term, A. D. 1867; to wit, at an adjourned term thereof, holden at New Haven, in said district, on the 23d day of April, A. D. 1867:

Present, William D. Shipman, district judge.

WILLIAM A. WRIGHT *et als.*
vs.
THE NORWICH AND NEW YORK TRANSPORTATION COMPANY. } Monition.

The President of the United States of America to the marshal of the United States for the district of Connecticut, greeting:

Whereas a libel has been filed in the district court of the United States for the district of Connecticut, on the ninth day of May, 1866, by William A. Wright, of East Haven, in the district of Connecticut; Samuel Hemingway, William Betsworth, William U. Robertson, and Albert V. Eldridge, of New Haven; Horatio Nichols and Robert Francis, of the city of New York; and Van Brunt and Slaight, of said city; and also by Dan Smith and the copartnership of J. Ludington & Company, all of said New Haven, against the Norwich and New York
2 Transportation Company, a corporation located in Norwich, in this district, in a cause of collision, civil and maritime, demanding thirty thousand dollars damages, and praying that a monition and process of attachment against the goods and chattels of said defendant may issue, pursuant to the rules and practice of this court;

You are, therefore, hereby commanded to attach the goods and chattels of said defendants in your district to the amount sued for, and to cite and admonish the said defendants that they be and appear before the district court of the United States to be held at Hartford, within and for the district of Connecticut, on the fourth Monday of May, 1866, then and there to answer said libel, and to make their allegations in that behalf; and have you then and there this writ, with your return thereon.

[50 cents U. S. revenue stamp canceled.]

Witness the Hon. William D. Shipman, judge of the district court of the United States for said district, at New Haven, this 9th day of May, 1866.

ALFRED BLACKMAN, *Clerk*.

R. I. and C. R. INGERSOLL,
Proctors for Libellants.

UNITED STATES OF AMERICA,
District of Connecticut, ss:

NEW LONDON, *May* 10, 1866.

Then, by virtue of this writ, I attached all the right, title, and interest of the within named Norwich and New York Transportation Company to a certain steamboat named the City of New York, lying in New London Harbor; and on the same day, at Norwich, in said district, I left a true and attested copy of this writ at the residence of P. St. M. Andrews, secretary of said company.

Attest:

JOHN GOULD,
U. S. Marshal for District of Conn.
Per P. R. CARLL,
U. S. Deputy Marshal.

3 *Fees.*

Expenses of travel	$9 00
Service	2 00
Keeping vessel	5 00
	$16 00
Copy	50
	$16 50
Endorsement	25
	$16 75

4 *Stipulation.*

District court United States, district of Connecticut.

WM. A. WRIGHT AND OTHERS
against
THE NORWICH AND NEW YORK TRANSPORTATION Company.
} In the matter of libel.

Whereas upon the monition issued upon the foregoing libel, bearing date May 9, 1866, the following described property has been attached by the marshal who served the said monition, to wit:

The steamer City of New York, now lying at the port of New London, with all her tackle, apparel, and furniture, the value of which, for the purposes of this stipulation, is agreed to be thirty thousand dollars;

Now, therefore, for the purpose of releasing said steamer from said attachment, we, the said Norwich and New York Transportation Company, acting herein by our duly authorized agent, Julius Webb, of Norwich, in said district, as principal, and the said Julius Webb as surety, hereby acknowledge ourselves bound, jointly and severally, to said libellants in the sum of thirty thousand dollars, to pay any judgment or decree that may be obtained by said libellants in said cause; and we hereby stipulate and agree that at any time, upon any order or decree of said district court or appellate court, to which said cause may proceed, (whether said order or decree be interlocutory or otherwise,) to bring into said court said sum of thirty thousand dollars, or such part thereof as may be ordered and decreed, to abide the said order and decree of said court in said cause.

Dated at New Haven, this 10th day of May, A. D. 1866.

Norwich and New York Transportation Company, by their agent, Julius Webb.

JULIUS WEBB.

[5 cents U. S. revenue stamp canceled.]

5 UNITED STATES OF AMERICA,
District of Connecticut, ss:

At a special term of the district court of the United States, within and for said district of Connecticut, holden at New Haven, within and for said district, on the fourth Tuesday of April, A. D. 1867:

Present, Hon. William D. Shipman, district judge.

WILLIAM A. WRIGHT *et als.*
vs.
THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

Be it remembered that heretofore, to wit, on the 9th day of May, A. D. 1866, William A. Wright, of East Haven, in the district of Connecticut; Samuel Hemingway, William Betsworth, William U. Robertson, and Albert V. Eldridge, of New Haven, in said district; Horatio Nichols and Robert Francis, of the city of New York, and James A. Van Brunt and Henry L. Slaight, copartners under the company name of Van Brunt & Slaight, of said city of New York, in the district of New York; and also of Dan Smith of said New Haven, and of Jesse Ludington, John B. Ludington, and Jesse C. Ludington, all of said New Haven, and partners under the name of J. Ludington & Co., filed in this court a libel, in the words following, to wit:

6 To the Honorable William D. Shipman, judge of the district court of the United States for the district of Connecticut:

The libel of William A. Wright, of East Haven, in the district of Connecticut, Samuel Hemingway, William Betsworth, William U. Robertson, and Albert V. Eldridge, of New Haven, in said district; Horatio Nichols and Robert Francis, of the city of New York, and James A. Van Brunt, and Henry L. Slaight, copartners under the company name of Van Brunt & Slaight, of said city of New York, in the district of New York, and also of Dan Smith of said New Haven, and of Jesse Ludington, John B. Ludington, and Jesse C. Ludington, all of said New Haven, and partners under the name of J. Ludington & Co., against the Norwich and New York Transportation Company, a corporation established under the laws of the State of Connecticut, and located in Norwich, in said State, in a cause of collision, civil and maritime, alleges as follows:

First. That before and at the time of the collision hereinafter in the third article of this libel mentioned, the said libellants, William A. Wright, Samuel Hemingway, William Betsworth, William U. Robertson, Albert V. Eldridge, Horatio Nichols, Robert Francis, and the copartnership of Van Brunt & Slaight, were the owners of the schooner General S. Van Vliet, of New Haven, in this district, her tackle, apparel, and furniture.

And the said libellants, Dan Smith and the copartnership of J. Ludington & Company, were the owners of the cargo on board said schooner at the time of said collision, as hereinafter set forth.

And the defendants were the owners of a certain steamboat called the City of Norwich, of Norwich, in this district, which steamboat was by them employed in the navigation of Long Island Sound, between the ports of Norwich and New York.

7 Second. That on the tenth day of April, 1866, the said schooner General S. Van Vliet, whereof the libellant, William A. Wright, was master, being of the burthen of 185 tons or thereabouts, set sail from Nantycoke River, in the district of Maryland, with a cargo of about nine thousand bushels of oysters on board, belonging to the libelants, Dan Smith and J. Ludington & Company, bound for New Haven, in this district; that said schooner was then and so continued to be until the collision hereinafter mentioned, tight, staunch, and strong, having a competent mate and crew of five men, and being in every respect well fitted to perform her said intended voyage; that she proceeded on her voyage north, and on the 17th of April, at 1 a. m., passed Sandy Hook, was towed through Hurl Gate during the forenoon of that day, and at about noon commenced to beat down the Sound with light breezes from northeast by east. At dusk her lights were set in the fore-rigging, as required by law, and so remained burning brightly until after the collision in the next article mentioned.

Third. That the wind continued as before mentioned during the night, and at 3.30 a. m., of the 18th, the schooner was put on her starboard tack heading about north, Eaton's Neck bearing east by south, about seven miles distant, the wind light and weather clear, the schooner going from two to three knots through the water, and the lights of Captain's Island, Norwalk and Eaton's Neck, visible. That just before staying, lights were observed to the eastward, between Norwalk and Eaton's Neck, and were supposed to be the head-lights of a steamboat steering westward, and at 3.40 this became evident to those on board the schooner, and the steamboat was discovered to be heading in the direction of the schooner. The master of the schooner was on deck, a competent man at the wheel, and a proper lookout forward, and her lights were burning bright. The schooner was kept on her course by the wind as before mentioned, the master not doubting that the
8 steamboat would keep out of the way of the schooner, as it was
its duty and in its power to do, until by its near approach he saw that a collision was imminent and could not be avoided by anything to be done on the part of the schooner. When the steamboat was within half her length of the schooner her engine bell was rung, and she sheared to the west northerly, striking the schooner on the starboard side between the cat-heads and knight-heads, staving in the weather bow, splitting the stem out and starting everything forward, heeling the schooner much over and causing her to pay off from north half east to about northwest.

Fourth. That the schooner's boats were at once got out and the injury examined. It was found that the water was rushing in forward, and that the schooner could be kept afloat a short time only. Efforts were made to stop the leak, double pumps manned, and an attempt made to work the vessel in shore, but at 5.30 a. m., it was found unsafe to remain longer in her, and she was abandoned, all hands going on board the steamer Electra, and soon after the schooner went down in fifteen fathoms water, with her cargo and all other property on board.

Fifth. That the steamboat proved to be the City of Norwich, owned by the defendants as before mentioned, and that said collision was wholly caused by the carelessness, inattention, and mismanagement of those on board the steamboat, either in not keeping a proper lookout for the schooner, or in not keeping out of the way of the schooner, as they were bound to do; and that those on board the schooner in no respect contributed to the collision, having, in their management of the schooner, complied with all the requirements of the law and the rules of good navigation.

Sixth. That the libellants, owners of the schooner as aforesaid, have sustained damage by the loss of said schooner in the sum of twenty-five thousand dollars, and by the loss of freight on her said cargo
9 in the sum of two thousand dollars, and in the loss of stores and fuel on board of her in the sum of five hundred dollars—making in all the sum of twenty-seven thousand five hundred dollars, which they are entitled to recover of the defendants, but which the defendants refuse to pay.

Seventh. And the libellants, owners of the cargo as aforesaid, have sustained damage by the loss of said cargo in the sum of twenty-five hundred dollars, which they are entitled to receive of the defendants, but which the defendants refuse to pay.

Eighth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that a monition in due form of law according to the course of this court in cases of admiralty and maritime jurisdiction, together with a warrant of attachment against their goods and chattels, may issue against the said Norwich and New York Transportation Company, and they be cited to appear and answer upon oath all and singular the matters aforesaid, and that this honorable court would be pleased to decree payment to the libellants of the damage they have respectively sustained as before mentioned, with interest and their lawful costs, and that the libellants may have such other and further relief in the premises as they may be entitled to receive.

By their agent:

WM. A. WRIGHT,
One of the Libellants.

Sworn to at New Haven, this 9th day of May, 1866, before me.

ALFRED BLACKMAN,
United States Circuit Court Commissioner
for District of Connecticut.

10 Upon which said libel process of monition and attachment was issued by the clerk of the court, returnable at a district court to be held at Hartford, in said district, on the 4th Tuesday of May, A. D. 1866, which said process was duly served and returned at Hartford, in said district, and at the term of this court holden at Hartford, in said district, on the 4th Tuesday of May, A. D. 1866, the said libellants, by C. R. Ingersoll, esq., their proctor, appear; and thereupon the said Norwich and New York Transportation Company, by their proctor, John S. Beach, esq., appear in court and file their claim and answer in the words following, to wit:

To the Honorable William D. Shipman, judge of the district court of the United States, for the district of Connecticut:

The exceptions of " The Norwich and New York Transportation Company," to the libel of William A. Wright and others, alleged that the said libel is informal and insufficient, as follows:

First. That the said libel does not state or set forth sufficiently what lights the said schooner therein named had at the time of collision, or where the same were set.

Second. That the said libel does not state the course of the said schooner, nor the direction of the wind, at the time of or immediately preceding the collision.

Third. That the said libel does not state what lights of the steamer were seen by those on board the said schooner, nor in what direction they bore from said schooner.

Fourth. That the said libel does not state how either the said steamboat or said schooner headed when near approaching each other.

Fifth. That the said libel does not state how long said schooner had been on the tack alleged, when the collision occurred.

11 Sixth. That the said libel nowhere charges or sets forth any particular act or fault of those navigating said steamboat, alleged to be careless, inattentive, and mismanaged.

Seventh. That said libel does not set forth or allege any act done or omitted by those on board the said steamboat, tending to produce the collision.

Eighth. Because the said libel does not set forth or allege why those on board the said schooner omitted to attempt to avoid the collision, if such was the fact, or why they omitted to take any steps when the vessels were so approaching.

Ninth. That said libel does not allege whether said collision was the result of the steamboat being interposed as an obstacle in the course of the schooner, or by the schooner being interposed in the course of the steamboat.

Tenth. That the said libel does not set forth or allege what part of the steamboat came in contact with "the starboard side" of the schooner, "striking" her, as they allege, between the cat-heads and knight-heads.

Wherefore the respondents pray that the said libellants may be required to amend their said libel in the several particulars aforesaid, and that the same may be dismissed with costs.

Norwich and New York Transportation Co.,
By D. SMITH, *President.*

JEREMIAH HALSEY, *Proctor for Respondents.*

And thereupon, afterwards, at a special adjourned term of said district court, held at New Haven, within and for said district, on the second Tuesday of September, A. D. 1866, to which term said premises came by due and lawful continuance, the said libellants filed their amended libel in said cause, in the words and figures following, to wit:

12 To the Honorable William D. Shipman, judge of the district court of the United States for the district of Connecticut:

The amended libel of William A. Wright of East Haven, in the district of Connecticut; Samuel Hemingway, William Betsworth, William U. Robertson, and Albert V. Eldridge of New Haven, in said district; Horatio Nichols and Robert Francis of the city of New York, and James A. Van Brunt and Henry Slaight, copartners under the company name of Van Brunt & Slaight, of said city of New York, in the district of New York; and also of Dan Smith of said New Haven, and of Jesse Ludington, John B. Ludington, and Jesse C. Ludington, all of said New

Haven, and partners under the name of J. Ludington & Company, against the Norwich and New York Transportation Company, a corporation established under the laws of the State of Connecticut, and located in Norwich, in said State, in a cause of collision, civil and maritime, alleges as follows:

First. That before and at the time of the collision hereinafter in the third article of this libel mentioned, the said libellants, William A. Wright, Samuel Hemingway, William Betsworth, William U. Robertson, Albert V. Eldridge, Horatio Nichols, Robert Francis, and the copartnership of Van Brunt & Slaight, were the owners of the schooner General S. Van Vliet of New Haven, in this district, her tackle, apparel, and furniture.

And the said libellants, Dan Smith and the copartnership of J. Ludington & Company, were the owners of the cargo on board said schooner at the time of said collision, as hereinafter set forth.

And the defendants were the owners of a certain steamboat called the City of Norwich, of Norwich, in this district, which steamboat was by them employed in the navigation of Long Island Sound, between the ports of Norwich and New York.

Second. That on the tenth day of April, 1866, the said schooner
13 General S. Van Vliet, whereof the libellant, William A. Wright, was master, being of the burthen of 185 tons, or thereabouts, set sail from Nantycoke River, in the district of Maryland, with a cargo of about nine thousand bushels of oysters on board, belonging to the libellants, Dan Smith and J. Ludington & Company, bound for New Haven, in this district; that said schooner was then and so continued to be, until the collision hereinafter mentioned, tight, staunch, and strong, having a competent mate and crew of five men on board, and being in every respect well fitted to perform her said intended voyage; that she proceeded on her voyage north, and on the 17th of April, at 1 a. m., passed Sandy Hook, was towed through Hurl Gate during the forenoon of that day, and at about noon commenced to beat down the Sound with light breezes from northeast by east. At dark, lights were set, namely, a green light in the starboard fore-rigging and a red light in the port fore-rigging, each in the usual shade-box about fifteen feet from the deck, and so remained burning brightly until after the collision in the next article mentioned.

Third. That the wind continued as before mentioned during the night, and at 3.30 a. m. of the 18th, the schooner, having her principal sails up, was put on her starboard tack heading north, a little easterly, Eaton's Neck bearing east by south about seven miles distant; the wind light from northeast by east and weather clear, the schooner going from two to three knots through the water, and the lights of Captains' Island, Norwalk, and Eaton's Neck visible from her deck. That just before staying, lights were observed to the eastward by the master of the schooner, which, after the schooner had been on her starboard tack about ten minutes, proved to be the head and side lights of a steamboat approaching the schooner, by what appeared to be a west southerly course, about two and a half miles distant, bearing about east northeast. The master of the schooner was at this time on deck with a competent man at the wheel, and a proper lookout forward, and the lights of the schooner, set as before mentioned, were burning brightly.

The schooner was kept steady by the wind heading north, a little
14 easterly, with the wind from northeast by east. The steamboat continued to approach the schooner without altering its

course, but the master of the schooner had every reason to believe, and did not doubt, that the position of the schooner in the track of the steamer was well known to those in charge of the steamboat, and that the steamboat would avoid the schooner, as it was its duty and clearly in its power to do, until, by its near approach without changing its course, it became evident that those having the steamboat in charge had either been so inattentive to the position of the schooner, or had so carelessly held the steamboat on her course as aforesaid, that, with its headway then on, there was not sufficient time for it to clear the schooner, and that a collision was inevitable. At about 3.50 a. m., when the steamboat had approached to within about half her length of the schooner, her engine bell was rung and her whistle sounded, and she sheered to the west northerly, and immediately struck with her forward port side, as it appeared to those on board the schooner, the starboard side of the schooner between the cat-heads and knight-heads, heeling the schooner much over and causing her to pay off from about north one-quarter east to about northwest, staving in her weather bow, splitting her stem, and so greatly injuring her that she immediately began to fill with water, and, in spite of all exertions, at 5.30 a. m., it was found necessary to abandon her, and she soon after went down in fifteen fathoms water, with her cargo and all other property on board.

Fourth. That the steamboat proved to be the City of Norwich, owned by the defendants as before mentioned, bound from the port of Norwich to the port of New York, under the command of   , as master thereof, and being of 900 tons burthen or thereabouts. That when the lights of the steamer were discovered from the schooner, as before mentioned, the lights of the schooner were burning brightly, and so continued as before mentioned, and could easily have been seen at a distance of three miles; and if the steamboat had kept a proper lookout would have been seen in ample season to have enabled her to give way to the schooner, as she was bound to do, and thereby
15 prevent said collision; and that if said lights were seen on board
the steamboat it was the duty of those having said steamboat in charge to slacken her speed if necessary and pass by the stern of the schooner, but this they neglected to do.

Fifth. That, at the time when the danger of a collision was first perceived, as aforesaid, from the schooner, it was impossible for her to get out of the way of the steamboat; nor were there any means to which those in charge of her could, with propriety, have resorted for that purpose. But that said collision was wholly caused by the carelessness, inattention, and mismanagement of those on board the steamboat as aforesaid.

Sixth. That the libellants, owners of the schooner aforesaid, have sustained damage by the loss of said schooner in the sum of twenty-five thousand dollars, her value, and by the loss of freight on her said cargo in the sum of two thousand dollars, and in the loss of stores and fuel on board of her in the sum of five hundred dollars, making in all the sum of twenty-seven thousand five hundred dollars, which, by reason of the premises, they are entitled to recover of the defendants, but which the defendants refuse to pay.

Seventh. And the libellants, owners of the cargo, as aforesaid, have sustained damage by the loss of said cargo in the sum of twenty-five hundred dollars, which they are entitled to recover of the defendants, but which the defendants refuse to pay.

Eighth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray process, &c.

By their agent:

WM. A. WRIGHT,
One of said Libellants.

16 Subscribed and sworn to by the said Wright, according to his best knowledge and belief, at New Haven, this 11th day of July, 1866. Before me,

C. R. INGERSOLL,
United States Commissioner.

And thereupon the said Norwich and New York Transportation Company filed in court the following answer to said amended libel, to wit:

To the Honorable William D. Shipman, judge of the district court of the United States for the district of Connecticut:

And now the Norwich and New York Transportation Company, a joint stock corporation, duly organized under the laws of the State of Connecticut, and located at Norwich, in said State, appear before this honorable court, and for answer to the amended libel of William A. Wright, Samuel Hemingway, William Betsworth, William U. Robertson, Albert V. Eldridge, Horatio Nichols, Robert Francis and James A. Van Brunt and Henry Slaight, copartners under the company name of Van Brunt & Slaight, and of Dan Smith, and also of Jesse Ludington, John B. Ludington, and Jesse C. Ludington, copartners under the company name of J. Luddington & Company, against the said Norwich and New York Transportation Company, allege as follows:

First. That the defendants were the owners of the said steamboat "City of Norwich," her engine, boilers, machinery, tackle, apparel, and other furniture, a steamer of twelve hundred tons burthen, or thereabouts; but whether the said libellants were the owners of the said schooner General S. Van Vliet, or of her cargo, as stated in the first article of said libel, the defendants have no information, and therefore neither admit nor deny the same.

17 Second. The defendants further allege that the several matters in the second, third, fourth, and fifth articles of said libel are, in great part, falsely alleged; and that the truth is as is hereinafter particularly propounded.

Third. That the said steamer "City of Norwich," with her engines, boilers, machinery, tackle, apparel, and other furniture, being in good order, staunch, and strong, and well and sufficiently officered and manned for her intended voyage from Norwich and New London to New York, between which places she ran daily, Sundays excepted, sailed from said Norwich on the afternoon of April 17th, 1866, at 2 o'clock, and proceeded down the River Thames to New London, where she stopped to take on board additional freight; and at about 9.30, in the evening of the same day, sailed for the city of New York, through Long Island Sound, having on board a large and valuable freight, belonging to various parties, much larger in value than the whole amount of the interest of the defendants in said steamer and of her freight then pending; and also having on board several passengers. That said steamer proceeeded on her course through the Sound without anything unusual occurring until the collision with a schooner, as hereinafter stated; which proved to be the said schooner General S. Van Vliet.

That before leaving the dock at New London, aforesaid, the usual lights were set on said steamer, consisting of a green light on the starboard side, and a red light on the port side, placed on the ends of the king-timbers, and thirty feet above the water; with inboard screens projecting at least three feet forward from the lights, and so as to prevent said lights from being seen across the bow; a white light at the stem, outside of the bulwarks, and so as not to be visible from the deck; and a white light at the head of the stern flag-staff, about forty feet above the water. Said lights were all well trimmed, and continued burning brightly through the night, and were so burning prior to and at the time of said collision.

18 Fourth. From 2.15, on the morning of the 18th, the said steamer was heading west by south, and continued on said course until said schooner was discovered, as hereinafter stated. The wind, during this time, was about northeast by east, and a four or five knot breeze. The night was dark, and, before the collision, had become hazy, with a low mist and occasional bunches of fog on the water. At 3.35, in the morning, when the steamer was heading as before stated, going at the rate of about ten knots, with a competent and careful lookout stationed on the upper deck at the stem, the first pilot, who was a competent and experienced man, on the lookout in the wheel-house on the port side of the wheel, and a competent man at the wheel, the lookout forward and the pilot in the wheel-house, at the same instant of time, discovered a schooner, which proved to be the General S. Van Vliet, about three to four points off the steamer's port bow, heading about north, and about three to four times the steamer's length from her.

No lights were visible on board said schooner; and she was first discovered, as aforesaid, by the head of her sails and gaffs being lighted up by the steamer's lights, although a steamer's lights, if properly trimmed and burning, could be seen a mile or so; yet, in the then state of the weather, a vessel without such lights could be seen for only a very short distance; and although the persons then in charge of said steamer and on lookout, as aforesaid, were watchful and attentive to their duties, no lights were or could be seen on board of said schooner; and she could not be discovered by them until she had approached so near to said steamer as to become visible for the reason before mentioned, when it was too late to avoid a collision by anything to be done on the part ot those navigating said steamer. Immediately on discovering said schooner the engine-bell was struck to slow, stop, and reverse the engine, which several signals were promptly obeyed; and the wheel was hove hard to port, and the course of the steamer thereby changed a little northerly, when the said schooner run into the steamer, stem on, striking her under the guard, on the port side, about sixty feet

19 from the stem, crushing a hole into her hull. At the time of the collision the engine was in motion, reversed, and the wheels were backing, but the motion of the steamer was still forward, though much reduced. The forward motion of the steamer carried the head of the schooner round in the same direction, and she was thereby cleared from the steamer and fell astern. The steamer was then backed to ascertain the condition of the schooner. In a short time it was discovered that the steamer was rapidly filling with water, and she soon after took fire from the rising of the water to her furnaces and was rapidly enveloped in flames, and sunk, with the loss of all of said freight, and the loss of several lives; the remainder of the passengers and crew being rescued by

the timely and humane exertions of the officers and crew of the steamer Electra, which was a short distance astern at the time of said collision.

Sixth. That there were no lights on board of said schooner properly trimmed and burning brightly at the time of said collision, which could be seen a mile or more, or any distance whatever, and that the lookouts, and those in charge of said steamer, could not by any possibility discover said schooner until her near approach to the lights of said steamer, as before stated. That there was no negligence, unskillfulness, or want of attention on the part of those navigating said steamer, but that the utmost care and diligence was exercised to discover the approach of other vessels, and after said schooner was discovered as aforesaid, everything was done which, under the circumstances, possibly could be done to avoid said collision, and that said collision was caused by the carelessness, inattention, and mismanagement of those in charge of said schooner; and that for want of such care, attention, and skillful management, the said schooner was run stem on into the side of said steamer, as before stated, causing the loss of said steamer with her large and valuable freight and of several lives, and thereby receiving all the damage which she received on that occasion. And the defendants deny that said steamer struck said schooner on the starboard bow, between the cat-head and knight-head, with her forward port-side, staving
20 in her weather bow and splitting her stem, as alleged in said libel. And they allege that under the circumstances it was in the power and the duty of those navigating said schooner to avoid said collision, as they allege they saw the steamer's lights for several minutes before said collision, and could tell how she was heading; and that by putting their wheel down and bringing the schooner into the wind, they could have avoided said collision even after it must have been apparent to them that those navigating said steamer had not discovered and could not discover said schooner.

Seventh. The defendants deny that by reason of the matters and things alleged in said libel, the libellants, the alleged owners of said schooner, have sustained damage to the amount of twenty-seven thousand five hundred dollars, or any damage or loss for which the defendants are liable; and that the libellants, the alleged owners of said cargo, have sustained damage to the amount of twenty-five hundred dollars, or any loss or damage for which the defendants are liable.

Eighth. That all and singular the premises are true.

Wherefore the defendants pray that this honorable court will pronounce against the demand of the libellants in their libel aforesaid mentioned and set forth with costs.

The Norwich and New York Transportation Co.,
By JULIUS WEBB,
General Manager.

J. HALSEY, *Proctor for Defendants.*

DISTRICT OF CONNECTICUT, *ss:*

NORWICH, *July* 23, 1866.

Signed and sworn to before me.

JAMES A. HOVEY,
United States Commissioner.

And at said last mentioned term of said district court, the said libellants and the said claimants were fully heard with their proofs, exhibits, and testimony of witnesses, whereupon said premises were duly
21 continued to the term of said district court, to be held at Hart-

ford, within and for said district, on the fourth Tuesday of November, A. D. 1866, at which said last mentioned term of said district court the following decree was passed by said court, to wit:

U. S. district court, district of Conn., Nov. T., 1866.

WILLIAM A. WRIGHT AND OTHERS
vs.
THE NORWICH AND NEW YORK TRANSPORTATION CO.

This cause having been heard on the pleadings and proofs, and due deliberation being had, it is ordered and adjudged and decreed that the libellants recover their damages, respectively, for the collision mentioned in the libel, and that it be referred to Alfred Blackman, esq., a commissioner, to take the testimony of the amount of such damages, and to report the same with the evidence to this court, with all convenient speed.

WM. D. SHIPMAN, *Judge.*

And said premises were continued from the last mentioned term of said district court to the term of said court holden at New Haven, within and for said district, on the fourth Tuesday of February, A. D. 1867, when the following report of Alfred Blackman, commissioner as aforesaid, was presented to said court, to wit:

U. S. district court, district of Conn., Feb. Term, 1867.

WILLIAM A. WRIGHT AND OTHERS
vs.
THE NORWICH AND NEW YORK TRANSPORTATION CO.

To the Hon. William D. Shipman, judge of the district court of the United States for the district of Connecticut:

In pursuance of the decree of this court, by which it was referred to the undersigned, as a commissioner, to report the amount of damages sustained by the libellants, with the evidence to the court, I do report:

I find the value of the schooner Van Vliet, at the time of collision, in April 18th, 1866, to be twenty thousand dollars.

22 I find that she was laden at the time of collision with 9,534 bushels of oysters, to be delivered at Fair Haven, for which her owners would have been entitled to receive as freight, including expense of delivery.......	$1,525 44
And that such expense of delivery would have been........	120 00
I find that said cargo of oysters cost at the place of shipment, April 10th, 1866,..	1,921 63
And that the expense of navigating said schooner from that time to the time of collision, was at the rate of $25 per day.	200 00

I find that the market value of oysters (such as composed said cargo) in Fair Haven, on the 18th of April, 1866, was seventy-seven and a half cents per bushel.

I find that the value of small stores on board said schooner, at the time of collision, was $325 00.

I find that the owners of the vessel have received from the wreck property valued at three hundred and fifty dollars.

I therefore report that, if the libellants, owners of the schooner, are limited in their damages to the value of said schooner at the time of collision, they have sustained damage in the sum of nineteen thousand nine hundred and seventy-five dollars, with interest from April 18th, 1866.

But if they are entitled to recover, in addition thereto, for loss of freight, I report that they have sustained damage in the sum of twenty-one thousand five hundred dollars and forty-four cents, with interest as before mentioned.

If the libellants, owners of the cargo, are limited in their damage to the cost of said cargo with interest, I report that they have sustained damage in the sum of nineteen hundred and twenty-one dollars and sixty-three cents, with interest from April 10th, 1866.

But if said owners of the cargo are entitled to recover for the cost of cargo with the freight to place of delivery, and expenses of delivery superadded thereto, then I report that they have sustained damage in the sum of thirty-four hundred and forty-seven dollars and seven cents, with interest from April 18th, 1866.

23 Or if said owners of the cargo are entitled to recover for the cost of cargo with expenses of navigation from the place of shipment added thereto, then I find that they have sustained damage in the sum of twenty-one hundred and twenty-one dollars and sixty-three cents, with interest from April 18th, 1866.

And I report herewith the evidence upon which this finding is made.

ALFRED BLACKMAN,
Referee and Commissio

NEW HAVEN, *March 14th*, 1867.

And thereupon said premises were further continued to a
term of the said district court, to be held at New Haven, in said d
on the fourth Tuesday of April, A. D. 1867, at which last me
term of said district court the following decree is passed:

U. S. district court, district of Conn., Feb. term, 1867, *ss*

WILLIAM A. WRIGHT *et als.*
vs.
THE NORWICH AND NEW YORK TRANSPORTATION CO.

APRIL 23d, 1867.

On reading and filing the report of Alfred Blackman, esq., commissioner, to whom the above matter was referred as by decree heretofore passed, on motion of C. R. Ingersoll, proctor for libellants, it is ordered that the defendants pay to the libellants, William A. Wright, Samuel Hemingway, William Betsworth, William U. Robertson, Albert V. Eldridge, Horatio Nichols, Robert Francis, James A. Van Brunt, and Henry L. Slaight, being the owners of the schooner General S. Van Vliet, the sum of nineteen thousand nine hundred and seventy-five ($19,975) dollars, together with interest thereon, from the 18th day of April, 1866, that being the amount of damage suffered by said libellants by reason of the collision mentioned in their libel, and that the defendants pay to the libellants, Dan Smith and J. Ludington & Company, being the owners of the cargo on board said schooner at the time of said collision, the sum of one thousand nine hundred and ford, within and for said district, on the fourth Tuesday of November, A. D. 1866, at which said last mentioned term of said district court the following decree was passed by said court, to wit:

U. S. district court, district of Conn., Nov. T., 1866.

WILLIAM A. WRIGHT AND OTHERS
vs.
THE NORWICH AND NEW YORK TRANSPORTATION Co.

This cause having been heard on the pleadings and proofs, and due deliberation being had, it is ordered and adjudged and decreed that the libellants recover their damages, respectively, for the collision mentioned in the libel, and that it be referred to Alfred Blackman, esq., a commissioner, to take the testimony of the amount of such damages, and to report the same with the evidence to this court, with all convenient speed.

WM. D. SHIPMAN, *Judge.*

And said premises were continued from the last mentioned term of said district court to the term of said court holden at New Haven, within and for said district, on the fourth Tuesday of February, A. D. 1867, when the following report of Alfred Blackman, commissioner as aforesaid, was presented to said court, to wit:

U. S. district court, district of Conn., Feb. Term, 1867.

WILLIAM A. WRIGHT AND OTHERS
vs.
THE NORWICH AND NEW YORK TRANSPORTATION Co.

To the Hon. William D. Shipman, judge of the district court of the United States for the district of Connecticut:

In pursuance of the decree of this court, by which it was referred to the undersigned, as a commissioner, to report the amount of damages sustained by the libellants, with the evidence to the court, I do report:

I find the value of the schooner Van Vliet, at the time of collision, in April 18th, 1866, to be twenty thousand dollars.

22 I find that she was laden at the time of collision with 9,534 bushels of oysters, to be delivered at Fair Haven, for which her owners would have been entitled to receive as freight, including expense of delivery.......	$1,525 44
And that such expense of delivery would have been........	120 00
I find that said cargo of oysters cost at the place of shipment, April 10th, 1866,..............................	1,921 63
And that the expense of navigating said schooner from that time to the time of collision, was at the rate of $25 per day.	200 00

I find that the market value of oysters (such as composed said cargo) in Fair Haven, on the 18th of April, 1866, was seventy-seven and a half cents per bushel.

I find that the value of small stores on board said schooner, at the time of collision, was $325 00.

I find that the owners of the vessel have received from the wreck property valued at three hundred and fifty dollars.

I therefore report that, if the libellants, owners of the schooner, are limited in their damages to the value of said schooner at the time of collision, they have sustained damage in the sum of nineteen thousand nine hundred and seventy-five dollars, with interest from April 18th, 1866.

But if they are entitled to recover, in addition thereto, for loss of freight, I report that they have sustained damage in the sum of twenty-one thousand five hundred dollars and forty-four cents, with interest as before mentioned.

If the libellants, owners of the cargo, are limited in their damage to the cost of said cargo with interest, I report that they have sustained damage in the sum of nineteen hundred and twenty-one dollars and sixty-three cents, with interest from April 10th, 1866.

But if said owners of the cargo are entitled to recover for the cost of cargo with the freight to place of delivery, and expenses of delivery superadded thereto, then I report that they have sustained damage in the sum of thirty-four hundred and forty-seven dollars and seven cents, with interest from April 18th, 1866.

23 Or if said owners of the cargo are entitled to recover for the cost of cargo with expenses of navigation from the place of shipment added thereto, then I find that they have sustained damage in the sum of twenty-one hundred and twenty-one dollars and sixty-three cents, with interest from April 18th, 1866.

And I report herewith the evidence upon which this finding is made.

ALFRED BLACKMAN,
Referee and Commissioner.

NEW HAVEN, *March 14th*, 1867.

And thereupon said premises were further continued to a special term of the said district court, to be held at New Haven, in said district, on the fourth Tuesday of April, A. D. 1867, at which last mentioned term of said district court the following decree is passed:

U. S. district court, district of Conn., Feb. term, 1867, *ss:*

WILLIAM A. WRIGHT *et als.*
vs.
THE NORWICH AND NEW YORK TRANSPORTATION CO.

APRIL 23d, 1867.

On reading and filing the report of Alfred Blackman, esq., commissioner, to whom the above matter was referred as by decree heretofore passed, on motion of C. R. Ingersoll, proctor for libellants, it is ordered that the defendants pay to the libellants, William A. Wright, Samuel Hemingway, William Betsworth, William U. Robertson, Albert V. Eldridge, Horatio Nichols, Robert Francis, James A. Van Brunt, and Henry L. Slaight, being the owners of the schooner General S. Van Vliet, the sum of nineteen thousand nine hundred and seventy-five ($19,975) dollars, together with interest thereon, from the 18th day of April, 1866, that being the amount of damage suffered by said libellants by reason of the collision mentioned in their libel, and that the defendants pay to the libellants, Dan Smith and J. Ludington & Company, being the owners of the cargo on board said schooner at the time of said collision, the sum of one thousand nine hundred and

24 twenty-one dollars and sixty-three cents, ($1,921 63,) together with interest thereon, from the 18th day of April, 1866, that being the amount of damages suffered by said last-mentioned libellants by reason of said collision, and that the libellants recover their costs, to be taxed, and, respectively, have execution to satisfy this decree. And the report of said commissioner is hereby confirmed to the extent herein above stated.

WILLIAM D. SHIPMAN, *Judge.*

And after the said decree is pronounced, the said Norwich and New York Transportation Company move this court for an appeal from said decree to the circuit court of the United States, next to be holden at New Haven, in said district, on the fourth Tuesday of April, A. D. 1867, and it is allowed, the said Norwich and New York Transportation Company, the defendants, having entered into a stipulation for costs on said appeal to the acceptance of said district court, in conformity with the rules of said court.

Attest: ALFRED BLACKMAN, *Clerk.*

And thereupon the following motion, by agreement of the parties, was filed in court and allowed, as a part of the record of said cause, prior to said final decree:

U. S. district court, district of Connecticut.

WILLIAM A. WRIGHT *et als.*
vs.
NORWICH AND NEW YORK TRANSPORTATION Co.
} In admiralty.

To the Honorable William D. Shipman, judge of the district court of the United States, for the district of Connecticut:

The respondents in said cause respectfully allege and show to your honor, that said steamer City of Norwich, at the time of said collision in said libel mentioned, had on board a large and valuable cargo of
25 merchandise or freight, belonging to various parties, and much larger in amount than the whole amount of the value of the interest of the respondents in said steamer and her freight then pending, as alleged in their answer to said libel on file in said court, and that the damages sustained by all of said parties, by said collision, including the libellants, was much greater in amount than   , the value of the interest of the respondents in said steamer and her freight, then pending, and that proceedings in rem have been commenced in behalf of said parties against said steamer in the district court of the United States for the eastern district of New York, for the recovery of said damages. They therefore pray that they be permitted to show by proper evidence the whole amount of damages sustained by all of said parties, and the value of said steamer and her freight then pending, and that the decree of this court may be so framed as to give the libellants such part or proportion of such amount of damages sustained by them, as determined by the court, bears to the whole amount of the damages sustained by all parties by said collision.

Norwich and New York Transportation Co.,
By D. SMITH, *President.*

J. S. BEACH,
J. HALSEY,
Proctors for Respondents.

26 The following is a copy of the testimony on file in said cause:

For the libellants.

THURSDAY, *Sept. 13th*, 1866.

Captain JOHN E. BOWNS sworn.

Examined by Mr. INGERSOLL:

Q. Where do you now reside?

A. In Bergen, New Jersey.

Q. What is your present occupation?

A. Coal shipper.

Q. What was your occupation on the 17th of April last?

A. I was pilot of the Elm City.

Q. What is the Elm City?

A. A steamboat.

Q. Where did she run in April last?

A. From New York to New Haven.

Q. At that time what were her usual hours for leaving New York?

A. Her usual hours were 3.15 p. m. from New York; 11 o'clock p. m. from New Haven.

Q. Did she leave New Haven on the night of the 17th of April; and if so, at what hour?

A. She did not leave New Haven on the night of the 17th, but on the morning of the 18th, at five minutes past two.

Q. At this time, of which you were speaking, were you on board of her?

A. Yes, sir.

Q. What watch had you that morning?

A. I had one wheelman, and a bow watchman on the forward deck.

Q. What was your watch?

A. I was on watch all the time.

Q. I mean your personal watch?

A. It was from New Haven to New York.

Q. All night?

A. Yes, sir.

27 Q. Did you only carry one pilot?

A. I had one wheelsman and a watchman with me on the forward deck, steering.

Q. Who was he?

A. Peter.

Q. What is he now?

A. He is now pilot of the Continental.

Q. During the night, after leaving New Haven, what was the state of the weather?

A. It was very fair for easterly weather. I found no difficulty in seeing vessels' lights two miles off.

Q. How was the wind?

A. It was about northeast.

Q. How as regards point of strength?

A. It was between a three and four-knot breeze.

Q. At what time are you now speaking of?

A. I am speaking now of the time when she left New Haven.

Q. Until when?

A. Until the time we passed the schooner; the wind kept gradually dying out all the time; from a four-knot breeze, which it was when we left New Haven, it got down to three.

Q. At what time?

A. At the time we passed the schooner, ten minutes to five.

Q. What schooner?

A. The schooner General S. Van Vliet.

Q. You have spoken generally of the weather. Was there any variation in the weather between night and morning?

A. It became misty and hazy as it came towards morning; it was not quite daylight; day was just breaking; the day did not break very fast that morning.

Q. You have indicated that you did pass that schooner, General S. Van Vliet; now state where it was, and under what circumstances.

A. It was about ten minutes to five in the morning of the 18th that we passed her.

Q. State all the circumstances, beginning with your discovery of her.

A. We discovered her about four lengths of our boat off.

28 Q. What is the length of your boat?

A. Three hundred feet long.

Q. At what rate were you going?

A. At the rate of 15 miles an hour.

Q. You say you discovered her—what followed?

A. As soon as I discovered her, I spoke to the man at the wheel, and told him to haul out under that vessel's stern, to the southward. We then headed right straight for her.

Q. What did you see about her?

A. I saw the green light in the starboard fore rigging burning brightly; I spoke to the man at the wheel about it at the same time.

Q. How were you heading?

A. Southwest—half-west—that is our course from Stratford.

Q. How was she heading?

A. She was heading about northward.

Q. Did you notice her being in difficulty?

A. Yes, sir; the jib-boom and bowsprit were carried away; I could not tell how much more.

Q. You say you spoke to the man at the wheel—what was done?

A. He hauled to the southward, and as we got very nearly abreast of her, I told him to haul close in towards her; he did so, and came very near to her.

Q. Before you hauled in towards her, could you have cleared her if you had kept on?

A. Yes, sir.

Q. Was there any difficulty in clearing her under these circumstances?

A. No, sir.

Q. About what was the state of the weather at this time?

A. It was a little hazy at that time. Very soon after that, after we passed her, it set in thick—it became foggy.

Q. How long after you passed her?

A. Half an hour.

Q. You can state what else occurred, if anything.

A. When I got up abreast of her, I heard somebody hail me. I
29 could not distinctly understand what was said. I understood
the person who hailed me to say, "Send me a tug-boat from New
York to tow me to New Haven." When I got to New York, I told a
man there to send one out.

Q. Did you know the schooner at that time?

A. I did not know her name; I knew she was an oyster vessel, bound for Fair Haven.

Q. Had you seen her before?

A. Yes, sir; I saw her that afternoon of the 17th beating out off Sands' Point—beating out at the head of the Sound.

Q. At what hour?

A. I should think it was twenty minutes to five—I do not know the exact hour in the afternoon.

Q. When did you see her the afternoon before?

A. I saw him about twenty minutes to five.

Q. Where was she then?

A. About Sands' Point.

Q. I think you stated the time that you came in sight of the schooner?

A. Yes, sir—ten minutes to five—we passed it at that time.

Q. Before you discovered the schooner, did you see any steamboat?

A. I saw a propeller laying off to the southward of the schooner about the same time that we discovered the schooner—we discovered them both together.

Q. How far up from the schooner was she?

A. I could not tell exactly how far off she was; it was a nice little piece.

Q. Do you know what steamboat that was?

A. I did not know then; I supposed it was the steamer Electra. I knew it was one of the Providence propellers.

Q. Did you see any fire during the time?

A. Yes, sir; we saw a fire when it first broke out. We were then between Bridgeport and Black Rock. It looked to us very much like a steamboat opening its furnace doors.

Q. How long was it before you discovered the schooner?

A. It was about an hour and twenty minutes from the time we first saw the fire to the time we got down to the schooner.

30 Q. How long did the fire continue?

A. It was burning when we got there. We took it to be brush burning on the shore. Being a little hazy, we supposed this propeller had been in collision with the schooner. The fire was very small.

Q. It was burning at the time you got down to the schooner?

A. Yes, sir; we first took it to be burning brush on the shore; and we then supposed it was the propeller which had been in collision with the schooner.

Q. When?

A. When we got down there to the schooner. We did not know what it was before. We saw only a very small fire. If we had not been so far off, when it first broke out, we could have seen her.

Q. When did you suppose it to be burning brush?

A. When we got along down to it.

Q. Not until then?

A. No, sir.

Cross-examination by Mr. **Halsey**:

Q. How near were you to the schooner when you first discovered her?

A. About four lengths of our boat off.

Q. You could perceive the sails of the schooner?

A. I do not recollect whether she had any sails up. I saw her hull and her light.

Q. Which light did you see?

A. A green light on the starboard fore-rigging.

Q. She was heading, as I understand you, about north?

A. Yes, sir.

Q. You were on the lookout at this time?

A. Yes, sir; I was in the pilot-house on watch.

Q. Did you see the lights of the propeller, off to the southward?

A. I did not notice whether I saw her lights or not.

Q. Did you see the vessel?

31 A. I saw the propeller.

Q. Which way was the propeller from the fire that you saw?

A. Between us and the fire. It was very near out.

Q. Then it was light in that direction?

A. Not at the time we passed it. It got down to a very little fire when we passed it.

Q. It was lighter than it would have been without any fire?

A. There was not much difference.

Q. Do you know how near you came to the propeller?

A. I suppose we were a mile off.

Q. You do not remember whether you saw her lights?

A. No, sir.

Q. You were then about four times your length from the schooner when you discovered her?

A. In the neighborhood of that, when we saw the propeller. The propeller was further off than the schooner.

By the Court: Is the City of Norwich a propeller, or a sidewheel steamer.

A. A side-wheel steamer.

Q. Your course was southwest by west half west?

A. Yes, sir.

Q. The wind, then, was pretty much aft of you?

A. Yes, sir.

Q. You were going before the wind some fifteen miles?

A. Yes, sir.

Q. How do you judge of the force of the wind?

A. I can tell pretty nearly by stepping outside of the pilot-house once in a while. It is very difficult to tell the exact force of the wind; but we can tell pretty near it.

Q. It was a dark morning, if I understand you?

A. Yes, sir; it was at that time right hazy—that is, at the time that we passed the schooner.

Q. It was dark before that, wasn't it?

A. It was dark, but then we could see lights two miles off, and we could see vessels without lights distance enough to clear them. We could see vessels without lights a half mile, as near as I could judge.

32 By the Court: When you speak of seeing a vessel without lights, a half a mile distant, are you speaking of the time when you passed the schooner, or before?

A. Before.

Q. You could then make out a vessel, by her lights, much further than you could when without lights?

A. Yes, sir; I could see a vessel with lights much further than I could see a vessel without them.

Re-direct:

By Mr. Ingersoll. You say that before this particular time you could see lights two miles, and a vessel without lights half a mile?

A. Yes, sir.

Q. How long before that?

A. Half an hour before.

By Mr. HALSEY. At the time you passed the schooner, how far could you see the vessel's lights—about the same distance?

A. No, sir.

Q. How far could you see the vessel's light?

A. About four or five times the length of the steamer.

Q. That is about as far as you could see at that time?

A. Yes, sir; at that time in the morning.

Q. What was the difficulty in seeing at that time?

A. It was hazy.

Q. Could you see the vessel's lights, at that time, as far as you could see the vessel herself? Which could you make out first, the light or the vessel?

A. We could make out the lights first. In this case we could make out vessel and lights both together, at the same time.

Q. At that time, which could you make out first the vessel or her lights?

A. We could make out the vessel as soon as we could the lights, because it had begun to grow daylight.

Q. If I understand you, the day had not broken at that time?

A. I say day was breaking.

33 Q. Was it daylight, darkness, or how was it?

A. It was daybreak—between daylight and dark. It was a bad time to see lights at that time in the morning.

Q. At that time you would see the vessel herself and the lights at the same time?

A. Yes, sir.

Q. I understood you to say, a short time since, that the trouble of seeing the vessel's lights at the time you passed the schooner was owing to the haze?

A. I do not recollect saying so.

Q. Now, I understand you to say that it was owing to the morning light?

A. I say it was the haze of daylight.

Q. So that you did not, in fact, see this vessel's lights until you got just four times your length of her?

A. No, sir.

Q. I have you down as saying, "as we got down towards her, that is, the schooner, it grew hazy." It was not daylight. The day did not break very fast that morning?

A. No, sir; it had begun to break; but daybreak and daylight are two different things.

Q. Did you say that the day did not break very fast that morning?

A. Yes, sir.

Q. Did you use this expression, "It was not quite daylight?"

A. Yes, sir.

PETER ALBERT sworn.

Examined by Mr. INGERSOLL:

Q. What is your age?

A. Forty.

Q. What is your present occupation?

A. I am a pilot of the Continental.

Q. What is the "Continental," and where does she run?

A. Between New York and New Haven.

Q. What is she?

A. A steamer.

34 Q. How long have you followed the water?

A. Twenty-six years.

Q. What was your occupation on the 17th of April last?

A. I was a wheelsman on board of the Elm City.

Q. Were you on board of her on her trip to New York that night?

A. Yes, sir.

Q. At what time did you leave New Haven?

A. Five minutes past two.

Q. On the morning of the 18th?

A. Yes, sir.

Q. What was the weather in your course down?

A. Pretty fair for easterly weather.

Q. How was the wind?

A. About northeast by east.

Q. If it had any variation in point of strength during the night, state it.

A. In the forepart of the night there was a pretty good breeze, and we could go from three to four miles an hour.

Q. How was it as to clearness?

A. It was a little hazy.

Q. Was there any difference, in that respect, during the night?

A. Towards morning it was a little more hazy than it was during the forepart of the night. During the forepart of the night it was pretty clear.

Q. During that trip did you at any time see the schooner General S. Van Vliet?

A. Yes, sir. That is, we found the name out afterwards. I did not know the name at the time I saw the schooner.

Q. Did you see the schooner?

A. Yes, sir.

Q. At what hour?

A. About ten minutes before five.

Q. Where were you at the time?

A. I was at the wheel of the Elm City.

Q. In the pilot-house, I presume?

A. Yes, sir.

35 Q. Was there any one with you?

A. The pilot was in there.

Q. Who was he?

A. Captain Bowns.

Q. How far were you from the schooner when you discovered her?

A. I was about four lengths of our boat.

Q. About how fast were you going?

A. Between fifteen and sixteen miles an hour.

Q. When you discovered the schooner, what did you see?

A. We saw a green light on the starboard fore-rigging, and the hull of the schooner soon after.

Q. Where was this green light?

A. In the starboard fore-rigging.

Q. How was it burning?

A. Pretty fair for the time of night. It was a fair light.

Q. On discovering her, what did you see?

A. The pilot told me to haul out to the southward. After I hauled out to the southward, he said to me, "That is a three-masted schooner. We had better haul in towards her a little." As I was hauling in towards her, the pilot stepped outside of the wheel-house. The captain of the schooner sung out something that I did not understand. After we got past the pilot came into the pilot-house again, and said to me, "I guess he wants a tug."

Q. What did you do with your steamer?

A. Kept on.

Q. How did you pass the schooner on the starboard side?

A. The schooner was to the north of us. We were bound westward.

Q. You passed her under her stern?

A. Yes, sir.

By the Court: Did you slow your engine at all?

A. No, sir.

Q. About this time did you see any steamer in the neighborhood?

A. We saw a propeller off to the southward of us.

36 Q. Do you recollect whether you saw her lights or not?

A. Yes, sir; I saw the steamer's stern light.

No cross-examination.

Captain Wm. A. Wright sworn.

Examined by Mr. Ingersoll:

Q. What is your connection with this vessel?

A. I am master of the vessel General Van Vliet, and one-quarter owner. The owners are the same as named in the libel.

Q. The owners of the cargo, are they as stated in the libel?

A. They are.

Q. What is your present age?

A. I was thirty-four last spring.

Q. Where do you now reside?

A. East Haven, Connecticut.

Q. How long have you followed the water?

A. Twenty-three years.

Q. In what capacities?

A. In all capacities; from cook, at eleven years of age, to master.

Q. How long have you been master?

A. Most of the time for seventeen years.

Q. Of what kind of vessels?

A. Schooners, with the exception of one sloop.

Q. On what voyages?

A. General coasting and West India trade.

Q. State your experience in the navigation of Long Island Sound.

A. I have been accustomed to going through the Sound from once a year to a dozen times within that period.

Q. Describe this schooner General S. Van Vliet.

A. She was a three-masted and single-deck schooner; nearly 116 feet between perpendiculars; 185 tons, new tonnage.

Q. Where was she built?

A. At East Haven.

Q. When?

37 A. Launched, if I mistake not, April, 1865; either the latter part of April or the 1st of May.

Q. On the voyage in question, you left Maryland?

A. Yes, sir; Nanticoke River, Maryland.

Q. When?

A. On the morning of the 8th, I believe.

Q. How was your vessel loaded?

A. I am not positive as to the day we left there. It has slipped my mind.

Q. I want to know how she was loaded?

A. With a cargo of oysters.

Q. State whether it was an ordinary cargo or not?

A. Yes, sir; an ordinary cargo of oysters.

Q. How many bushels?

A. About 9,500 bushels.

Q. How did that bring her down? What did she draw with that cargo.

A. She drew about eight and a half feet aft, and about seven forward.

Q. Did you state how long you had been master of the Van Vliet at this time?

A. I took charge of her in August, 1865.

Q. You have been master of her since August. State as to how she was loaded at that time; whether in the ordinary way.

A. We had a full cargo of oysters. They did not load a vessel as deeply as coal. This vessel, with her full complement of coal, would have been six inches deeper than she then was.

Q. State now, when, on this voyage, you entered the Sound.

A. We passed Sandy Hook on the morning of the 17th, about one o'clock a. m. Passed through the Gate in tow of the tug about 10 o'clock forenoon. Left Ricker's Island under sail between twelve and one o'clock. The wind was about northeast-by-east—a good whole-sail breeze. We beat along out of the head of the Sound during the afternoon, the wind gradually dying out. At sunset, when off Nanticoke Point——

Q. Where is that?

A. Just outside of Sands' Point, east side of Hampstead's Bay.
38 There was, at that time, at sunset, about a four-knot breeze dead ahead—very clear. Our side lights were set at that time, about sunset.

Q. Just here describe those side lights.

A. The starboard one is a green light, and the port one a red light.

Q. How constructed. Where were they placed?

A. Placed in their shade-boxes in the fore rigging, at about ten or twelve feet above the rail.

Q. How were those shade-boxes constructed?

A. They were made something like a trough. A board goes right on to the rigging, and a shelf-board on the foot of it projects out from the lights. The forward board of the rigging runs forward from the lanterns about three feet and a half, to keep the light from shading across the bows.

Q. About how wide is that in-board?

A. The in-board screen was about three feet and a half long.

Q. About how wide, or high, do joiners generally make them?

A. We have enough to cover the depth of the lantern, whatever it may be. I suppose our boards were fifteen or sixteen inches wide. They were made by a ship-joiner in Baltimore, in October last. A shelf-board projects forward as far as the screen-board, rounding off to a point both together. The triangle of these boards, in the aft side, is brought out square from the top down to the foot.

Q. Explain the object of that.

A. The object of that is to keep the lamp from shading across the bow, and from shading abaft, so that it will only show ahead, and round to two points abaft the beam, as the law requires.

Q. Were these made in the usual way?

A. Yes, sir; in the usual way. It was a first-class side light.

Q. Now, as to the lamps?

A. The lamps were the usual first-class sailing-vessel side light,
39 red and green glasses. The glass is round, forming about a half
circle. Then the back of the lantern comes together, forming a
point, to fit in this box.

Q. Where were they procured?

A. In New Haven, at Hotchkiss's, ship chandlers. So I understood from him. They were on board of her when I took her.

Q. Just state here what you burned in the lamps?

A. Baker's signal oil. The lamp holds a beer half pint signal oil. There are three round wicks to it.

Q. Holding a beer half pint each?

A. Yes, sir.

Q. Now, as to the wicks?

A. There are three round wicks in each lamp.

Q. Where was this oil procured?

A. At Mill's and Crawford's, in New York, where I trade.

Q. What are they?

A. Ship chandlers and general furnishers for vessels.

Q. What is this Baker's signal oil?

A. It is a peculiar burning fluid. It came into general use several years ago, as the best oil for signal binacle lamps, and so on. It is something that in cold weather does not freeze up, and is not liable to go out by the motion of a vessel, swinging of the rigging, and so on.

Q. It is made expressly for vessel purposes?

A. Yes, sir.

Q. How is it with the price, as compared with other oil?

A. At one time I inquired the price, and found that kerosene was worth about a dollar and a half, while they required about two and a half for this. My chandler proposed to me to change my lamps and burn the other oil; but I objected, because I considered Baker's oil so much superior for signal lights.

Q. How as to its burning power; you had been in the habit of using it, I suppose?

A. Yes, sir. I never used anything else in the side light, from the time the law of side lights came up.

Q. How long had you used it?

A. About two years. I was in Baltimore in October, 1864, and
40 got a copy of the law, and bought a couple of side lights.

Q. Now, from your experience, what can you say regarding its burning power?

A. I considered it the best of anything I ever burned. A lamp of the same capacity of Baker's oil I consider will only burn half the quantity in a given time that it will of kerosene with the same quantity of wick.

Q. State as to the length of time which a lamp, such as you have described, burns?

A. I have not experimented with them, but know that they burn in the longest night, in winter, from sundown until daylight in the morning, at which time we always take them down.

Q. Now just go on with the narrative of what occurred?

A. I went below at 8 o'clock. My watch below was from 8 until 12, during which time the mate had charge of the deck, beating down the Sound. I came on deck again at 12 o'clock, when about off Captain's Island.

Q. Did you come on to stand your watch?

A. Yes, sir.

Q. Who was in the watch with you?

A. Geo. Mullenhoff and Daniel Patience. At that time, 12 o'clock, when I came on deck, there was a three-and-a-half-knot breeze. The wind was the same as at sunset—northeast-by-east. We headed north on the starboard tack, and east-southeast on the port.

Q. State as to the weather?

A. The weather, at 12 o'clock, was clear and starlight. At 2 o'clock, there were but few stars in sight. We were making tacks of from half an hour to one hour in length. At 12 o'clock, when I came out on deck, the lights on Eaton's Neck, Captain's Island, and Norwalk, were all three in view. They continued in view until after the collision. At 3.30, we went about for the last time.

Q. At this time who was on deck besides yourself?

A. I had charge of the deck. Daniel Patience had the wheel, and George Mullenhoff the look out forward.

Q. What was the last tack that you made?

41 A. We tacked Eaton's Neck east-by-south, standing north with our starboard tacks, keeping the vessel full and by the wind.

By the COURT: That means going as close to the wind as the vessel would sail?

A. Yes, sir.

Q. At this time it was not as clear as at 2 o'clock.

A. There were no stars in sight, I think. At the time of staying, or the instant before, I observed three lights to the eastward of me. I supposed them to be steamer's head lights. After I had been on that tack ten minutes, I saw that one of them was the head light of a steamer; and three or four minutes after that I saw a port red side light. Our attention then was wholly directed towards her. I observed the others no further. At the same instant that I saw her port light, my look-out man came out aft the house where I then was, and reported steamer's lights to the windward. I then went forward, stepped upon the rail, and observed my weather side light. I then again came down on the deck, and watched the boat.

Q. That was a green light?

A. Yes, sir.

Q. You say you stepped up and observed the side light. What did you observe?

A. I observed it was burning brightly. I then saw that the steamer would probably intersect us in the course she was heading, and that we would come about together.

Q. At what time do you mean that you saw the steamer was heading for you?

A. After I stepped from the rail down upon the deck, and took a good look at her.

Q. What did you observe?

A. I then stood forward until both her side lights came open. Then I knew she was heading for me. That was a little short of two or three minutes. I walked towards the aft part of the vessel so as to be in a better position to observe her range if she sheered. The steamer was then approaching us very rapidly. I could not tell which side intended to go. From the manner in which she was heading, I

42 thought she could strike us between our fore and main rigging. When I observe both her side lights open, heading for us in that position I left and went aft. She was so near when I got aft that I shut her starboard side light in as I walked aft. Our course, at this time, was north. I judged her to be heading west, a little southerly. I saw no sheer of boat, and heard no bell, or whistle, or anything of the kind until the boat was within her length or less, of our vessel. Then I heard her engine bell distinctly, and she sheered to the west northerly, putting her wheel at port—the stem of the steamer striking the schooner in her knight heads and heel of bowsprit. The end of the jibboom and bowsprit went right up in the air. In an instant after the first crash, the vessel keeled over aport, and her bows pitched down, falling off from her course a couple of points. She went across us rapidly, in a diagonal manner.

Q. It was the schooner that keeled over?

A. Yes, sir; the steamer, dragging across our bow. I immediately called my mate and steward out from the cabin. The other men were called out forward, or came out from the shock. The steamer passed our bow rapidly. We lowered our boats down immediately. At that instant I supposed the schooner to be sinking rapidly. We got our boat down and hauled alongside. Finding she was not going down on the instant, we proceeded to examine the condition of the vessel, to see what damage had been done. I proceeded myself with a lantern, and then, accompanied by one of my men, went into the forecastle-room, and examined the leaks. I saw that the stem was started, and that the planks on the weather bow were stoven in badly by the water-line. The wood ends were started clear down to the scarf of the keels, while the weather bow, from the water-line clear up, was stoven in more or less. I examined it more fully afterwards. After noticing it, then I came up and had the vessel's spanker lowered down, the main peak dropped, and her wheel put up.

Q. What is a spanker—a mizzen sail?

A. Yes, sir.

Q. Well, proceed.

43 A. I next hauled up the centre-board, the vessel's wheel being up at the time, trying to keep her off before the wind, and get towards the island shore. Owing to the head sails being gone, and the bowsprit and head gear being under the bow, I could get no command of the vessel. She laid in the same position until we left her in the morning.

Q. I understood you to say that you came up from the forecastle, and afterwards examined her injuries?

A. Yes, sir; I had all the men, with the exception of one, put on the pumps. I took one man with me and went into the forecastle, for the purpose of endeavoring to stop this leak, if possible. I then examined the injury more thoroughly.

Q. That was a second time?

A. Yes, sir; I worked in there, off and on, for upwards of three-quarters of an hour. I was up occasionally on deck, and down below again, until the water had risen so high that I found it was impossible to save the vessel. After I got through the attempt to save the vessel, I then had time to examine more minutely the injury to the vessel, as the wind was at that time very light, and the water perfectly smooth. My boat was alongside, so that I could leave her in an instant; therefore could remain by her to the last moment. Her bowsprit laid on the port bow, the heel forward, and the cap abaft, right under the fore chains, right

down under the fore-rigging. The weather-rail and stanchions were gone to the cat-head, with just one stanchion abaft of the cat-head, on the starboard bow. The rail and water-way were both started clear to the fore-rigging, but the stanchions were not gone. The anchor, which was by the starboard bow, with the ring at the cat-head and flues upon the rail aft of the cat-head, were knocked over to the port side of the deck, forward of the windlass. Forward of the cat-head, the stanchions were knocked in on deck with the knight-heads. From the cat-head forward, below the water-way, the water-way was broken in; and the wales were split and broken down to the lumber port, which was stoven in. The stem that projected outside of the wood ends was split off and gone. The forward part of the stem was split off up and down, and gone from its place amongst the rubbish under the bows. What was
44 left of the stem and apron was started. They were slewed round
so that the wood ends were opened clear down to the keel, and started adrift from their fastenings. There were no marks on the wales on the port bow, but the wood ends of the plank were started on the stem and apron by the slewing of the stem; but the knight-heads, rail-stanchions, and waist of the port bow were lopped overboard as far aft as the flues of the anchor, which anchor was upon the rail six or seven feet abaft of the cat-head, clear from the cat-heads round to the knight-heads forward. The lee bow had fallen out, and was over in the water; then it twisted round to the fore-rigging. Starting from nothing at the fore-rigging until it got round to the head, it was clear over.

Q. Anything further to the hull of the vessel?

A. The heel of bowsprit that passes through the knight-heads, and back to the pall-post, a distance of about ten feet, was entirely gone. There was no heel of bowsprit laying on deck of vessel, as the side of the pall-post was split out where the heel of bowsprit tenanted into it.

Q. I understand that the bowsprit was taken right out of her entire?

A. Yes, sir; there was no heel of bowsprit left on deck.

Q. What was the condition of that part of the bowsprit between the pall-bits and the knight-heads?

A. Right in the knight-heads, where the bowsprit would pass the knight-heads, the bowsprit was slivered, smashed, but not broken clear apart.

Q. Now, back from there towards the heel?

A. It was whole.

Q. And where it entered the pall-post?

A. I could not exactly state whether that was slivered or not. That end of the bowsprit lay in the water forward, and the extreme end of it was covered with the wreck of the head-gear, which end was in the water. The heel of the bowsprit lay in the water, but the extreme end of it was pressed rather under, so that I could not observe it clearly.

Q. Is that all the injury to the hull of the vessel, that you think of?

45 A. Yes, sir, about all.

Q. Now, I omitted to ask you under what sail she was at the time of the collision?

A. She had her spanker, mainsail, foresail, jib, flying jib, jib topsail, mizzen gaff-topsail.

Q. What became of any of those sails at the time of the collision?

A. The head sails were carried round to the leeward, and the stays hung up and down the fore-rigging. The sails were hanging down upon those stays in that fore-rigging, so as to envelope the fore-rigging from the forward side, clear round outside, in a general snarl.

Q. Do you mean by the head sails, the four jibs?

A. The three jibs.

Q. State what further was done by you personally with reference to the schooner, after the collision.

A. I saw her about two hours after we were struck.

Q. Before you come to that, I will inquire about another matter. You say that just before the collision you observed your other light, when it was burning brightly; did you observe your lights after that?

A. I did.

Q. When, and under what circumstances?

A. A very few moments after the collision I told my men to observe our lights; to see if they were burning brightly; and then went forward myself, stepped into the starboard fore-rigging, and saw my green light. I then went to the leeward lookout for the purpose of looking at the port one; but I poked away the leech of one of the sails from the forward rigging, and saw a red light burning brightly there under the sail.

Q. You say you stepped on the starboard fore-rigging, and looked at the light. What did you see?

A. I saw the green light in the starboard rigging, burning brightly. The port one was enveloped in a jib. You could see the shade of it from the deck somewhat, but could not see it plainly without poking the jib away at that time.

Q. If that is all you have to say on that point, you can pass
46 to what I called you from—that is, about an hour after the collision.

A. Well, my mate spoke to me and said, "There comes another steamer heading for us." I then made some casual remarks; such as, that it didn't make much difference about steamers, then.

Q. What did she prove to be?

A. The "Elm City"—she was heading about for us midship when I first noticed her. Both her side lights were open. She sheered off to go under our stern aport. I went aft and hailed her, so as to make her understand who I was, and requested her to report me in New York.

Q. What did you say?

A. I supposed that there was a pilot I knew in that boat at that time; and when I hailed the vessel I called him by name, John Sanford.

Q. What followed aboard your schooner?

A. We, at that time, had given up all hopes of saving our schooner from sinking.

Q. You will state then what you did say.

A. I hailed the boat, calling the man that I supposed to be pilot of her by name. He answered me back. I shouted my own name, in order to have them understand who I was, and report me in New York. He, I afterwards learned, misunderstood me, and supposed I wanted a tugboat. We had, at that time, given up all hopes of saving the schooner, and our personal effects were placed in a position which would be convenient for having them removed from the boat. At about 5.30 all hands left her in our yawl boat, and went on board the steamer "Electra." There our things were taken out of the boat; and, at my request, Capt. Nye steamed up towards the schooner.

Q. Capt. Nye of what?

A. The "Electra;" steamed up on the port side of the schooner, within four hundred or five hundred feet of her, on parallel lines, as she came up alongside. He came up rather slowly, stopping his engine just before he got to her. After holding a short conversation with

47 some of his officers while he was going along slowly past her, he decided that nothing could be done towards saving her, as she was then so low in the water—the water at that time commencing to wash her decks. He sheered off again on a course for New York. I have not stated where I first saw the "Electra." Ten minutes or so after the collision, my mate spoke to me, and said, "The boat is on fire." I looked to the leeward on our leebeam, or just abaft the beam, and saw the steamer "City of Norwich." The fire and smoke came out from her, and I saw the steamer "Electra" close by her. They were on our lee port beam, or rather abaft the beam, at that time. I would not like to speak positively regarding her bearings, because I was very busy at the time. My attention was called to her from the mate saying to me that she was on fire. I saw the "Electra" a short distance from her, and afterwards I left the schooner and went on board of her. The drift of the vessels had changed her position, so that when I left to go on board of her, she was something to the southeasterly; and nearly southeast of us when I left our vessel to row towards her; and from half to three-quarters of a mile distant.

Q. That is when you left your vessel?

A. Yes, sir.

Q. I believe you have not stated who composed your crew?

A. Minor F. Wright, my mate; Peter Farn, seaman; George Mullenhoff, seaman; Daniel Patience, seaman; Herman Rodick, seaman; Gustavus Peters, colored, cook and steward.

Q. You spoke of seeing some lights previous to the collision. Did you or not see the lights of any other vessel than those you have mentioned?

A. I think I mentioned that at the time I saw this steamer I saw two other lights to the eastward. When my attention became attracted toward the Norwich I paid no further attention to them; but during the whole course of my watch, I, at intervals, saw vessels working down the sound behind me; I frequently, during the watch, saw vessels coming with a fair wind through the sound. We passed quite a number.

Q. Did you know either of these vessels beating down?

A. Yes, sir, I knew one of them.

48 Q. What vessel was that?

A. The schooner "Chieftain" of Fair Haven. She was loaded with oysters, bound to the same port. As regards her sails, of which, I believe, I have not spoken, I will state that before we left the vessel to go on board the "Electra," we lowered our sails down, and made her gaffs fast, except three jibs, which could not be got down. Her lights were burning in the rigging before we left her, and on taking a last look at them just before leaving her decks, I saw them still burning, and very clearly. They had never been touched from the time of their being set at night up to the time of our leaving.

Q. When you were on board the "Electra," did you or not notice where her head sails were?

A. I did; they were hanging up and down the fore-rigging, enveloping the port fore-rigging as they were at the time of the collision.

Peter Albert recalled.

By Mr. Ingersoll:

Q. When you were examined before, this morning, I asked you how the light that you saw on the schooner was burning, and I understood you to say that it was pretty fair for the time of night.

A. I meant fair for the weather. If it had been a bad light it would not have been seen at all. The same light, clear weather, might have been seen two or three miles.

Captain William Wright.

Cross-examination by Mr. Halsey:

Q. You say you tacked at 3.30; and that just before tacking you saw lights eastward—one or more. About how far from you was the first light you saw?

Witness. The light that proved to be this steamer's light?

Mr. Halsey. The first light that you saw?

A. I judged it to have been four miles.

Q. How did she bear from you?

49 A. East-north-east, very nearly that. I observed the bearing casually from the compass.

Q. How soon did you make another light in the same direction?

A. I made her side light in about ten minutes from that time. It had altered its bearing slightly.

Counsel. I mean now the light of another steamer or vessel. You say you saw three lights to the eastward.

A. My attention soon became attracted towards her, and I did not observe the others.

Q. You say you saw two others. How soon after seeing the first did you see the other two?

A. I could not say positively. I observed them but casually.

Q. As you remember it?

A. I can state nothing definitely as regards these other two lights. My attention was wholly attracted towards this one soon after making it; but my impression is, that I saw one light just before I saw hers; and the other just after. Hers was between the two. That is merely my impression.

Q. Well, about ten minutes after first seeing her light, you made out her port light, as I understand you—that is, the red light?

A. Yes, sir; about that time.

Q. Was it before or after making out the port light that you went forward?

A. Almost on the very instant of making the port side light; the lookout man walked along as far as the midships, and reported steamer's light to the windward.

Q. You then went forward?

A. I went forward very soon; I do not know that I did at that exact instant.

Q. How far was the steamer from you when you made her port light?

A. I judge her to have been two miles.

Q. How bearing?

A. I did not observe her bearing strictly, as I was not by the compass.

50 Q. But from your vessel. How did it bear off of your beam?

A. It bore forward of the beam.

Q. It bore then on your starboard bow?

A. Yes, sir.

Q. You made her off your starboard bow, apparently two miles from you.

A. Yes, sir.

Q. Now, I understand you to say that subsequently, while forward you made both side lights of the steamer.

A. I did before I came clear aft again. I might have walked fore and aft the deck more than once.

Q. Where were you standing when you made out both side lights of the steamer?

A. When I saw both her side lights I stood by her fore-rigging.

Q. Then you must have been directly ahead of the steamer; must you not?

A. Not quite at that time.

Q. How far was the steamer from you at that point of time when you first made out both the side lights?

A. As to the distance I could not state. She was approaching us pretty closely.

Q. You will remember that it is your judgment we are asking for. You say you stood there and saw these lights both opened. How far was she from you when you opened those lights?

A. Something less than half a mile, I should suppose.

Q. Was there not apparently quite a space between you then?

A. I should judge something less than half a mile.

Q. At what rate were you going at that time?

A. I think for the last hour we had never gone over three knots, and from that time down to less than two.

Q. Confine it to that time?

A. Well, between two and three knots.

Q. How long did you remain in that position after you saw both the lights?

51 A. I walked immediately aft.

Q. How far did you go aft before you lost sight of the green light? I understood you to say that when you went aft, the green light was shut in.

A. When I got to the vessel's house the steamer had come so near us on her course, not altering it any, that she had shut in her weather lights.

Q. Was it in consequence of the steamer coming near, on the same course, or in consequence of your going aft, out of the line of vision?

A. Both had a tendency to change it. She went ahead and I went aft.

Q. You did not change your course at all?

A. No, sir.

Q. You did not observe any change in the steamer's course up to that time?

A. None up to the time I left to go aft.

Q. Then, if I understand you, when you stood forward, and saw both these lights, she was heading so that she would strike you between your foremast and mainmast?

A. Yes, sir.

Q. And in which direction—more to the mainmast, or more to the foremast?

A. I should think she would strike nearer to the foremast.

Q. And pointing more towards your stem?

A. That is a very nice point to determine. She was heading one point on us from right angles.

Q. How near was she to you when she changed her course?

A. I should say less than her length.

Q. How was she heading at that time?

A. I judged her to be heading west, a little southerly.

Q. Was your vessel's bow past the line of the steamer?

Witness. At the time the boat sheered?

Counsel. Yes, sir.

Witness. I should judge our bowsprit and head sail must have been entirely past it.

Q. Must it not have been so if you saw both side lights at the time you speak of, when the steamer was half a mile off?

52 A. I do not judge from that; I judge from what I actually saw, not as an engineer calculating distances.

Q. Then, if I understand you, your bowsprit and head sails being past the line of the steamer's course, she, instead of striking you there, changed her course to starboard; and how do I understand she struck you?

A. She struck us in about the knight-heads.

Q. With what?

A. I judged it to be with her stem.

Q. Could it have been with anything else, as you saw it?

A. It did not look to me as if it could.

Q. Could it from the way you saw it?

A. It did not look to me that it could.

Q. Could it from the way you saw it?

A. A man has to look pretty quick at such times, for things pass before him very rapidly. I was at the aft part of the vessel, which was 116 feet long, and was standing looking at her.

Q. Have you not frequently stated that she struck you with her stem?

A. I might have done so. I stated so just now to you.

Q. And all the damage that was done to the bow of your schooner was done by her striking you somewhere near the knight-head, or cat-head, or between the two, and a glance blow in going by you.

A. I do not think it was all done by that striking in at heel of bowsprit and knight-head with her stem, because her weather waste was in on deck aft of that. Our weather waste was knocked in, and our anchor was knocked across to the other side of the bow.

Q. How was that anchor carried from its place on the starboard bow at the cat-head and placed over to the other side of the deck to the port rail?

A. I suppose it was knocked over by the steamer.

Q. Whereabouts did it lie? Was it directly opposite its position, or forward, or aft of it?

A. Forward of it, if I mistake not.

Q. How far from the stem where it lay on the deck?

53 A. It lay on the deck just forward of the windlass.

Q. How many feet was that from the stem?

A. From between five and ten.

Q. How far was the place where it was secured, as you have described, from the stem, before it was disturbed?

A. I should judge on a sweep of the bow from the stem to the knight-head, it might be ten feet to the ring of the anchor at the cat-head.

Q. Was there any hole stoven in your vessel on her starboard bow?

A. The plankshire and upper wales on the starboard bow were smashed in. The ceiling was bulged in by the breaking of the timbers.

Q. But that is all you allude to as any breaking in?

A. No, sir; forward of that there is a lumber port in her. That lumber port seemed to be stoven in entirely. There was a large opening there, through which a man might pass.

Q. Was your vessel a pretty round bow where that lumber port was located, or a sharp bow?

A. Rather a sharp bow for a flat vessel.

Q. How far was the lumber port from the stem?

A. From the stem to the forward end of the lumber port there was not more than six or eight inches.

Q. It is clear forward?

A. Yes, sir; it is clear forward to the apron.

Q. That lumber port was located forward of the place where you claim the steamer struck you, was it not?

A. Where the steamer's head struck us first, there our bowsprit was taken out.

Q. I understand you to say she struck you somewhere on the weather or starboard bow, between the cat-head and knight-head, and stove in the rail all along there, and the stanchions almost back to the fore-rigging?

A. The steamer after striking in there with her stem dragged her guard over us. At one time her guard passed over our starboard bow.

54 Q. And I further understand you to say that she went by you on a sort of diagonal course?

A. Yes, sir. She was, I supposed from her appearance, continually sheering.

Q. You got the idea that she smashed in your stanchions and the bulwark, in that way, by going by you when she struck you there by the lumber port with her stem?

A. Yes, sir. That there was something dragged over us, when she came afoul of us.

Q. Could she give a blow with her stem into your lumber port so as to stave that in, in the manner you have described, without breaking any more?

A. I do not know that that lumber port was brok'n in by a blow of the stem.

Q. I am only asking you if she could strike a blow with her stem so as to stave in the lumber port, without staving in more above and below.

A. It was stove in above the port, abaft of it—and below it, I could not see, for it was even with the water.

Q. Did it not convey the appearance of being jammed in, and this bulging that you speak of inside, where was that?

A. Aft of that port there are two heavy clamp streaks of oak planks, six inches thick, and fifteen inches wide. They were torn and slivered, not broken clear through, by having the timbers driven in against them.

Q. Where was the hardest blow given?

A. It seemed to me the hardest blow was what took our knight-heads, and heel of bowsprit and stem. When her stem struck our heel of bowsprit and knight-heads, her wheel-house ranged from me, when standing at the wheel, abaft our mizzen rigging, and her pilot-house ranged abaft our fore-rigging.

Q. Then she did not hit the leeward part of your vessel?

A. No, sir; she only hit upon the top part of the hull, the knight-heads and stem. Our vessel, of course, had some rake forward, and this steamer's wheel was aport, and she had some rake also. She keeled us over to port, and pressed down forward, raising her stern.

55 Q. How much was your vessel out of water before the collision?

A. I have not measured it. I can give an estimate, which will be pretty close.

WITNESS. You mean from the water to the top of her knight-head?

COUNSEL. I mean from the water to her rail.

WITNESS. It would have been to the top of her rails forward, at the knight-heads, about seven and a half feet.

Q. How much midship?

A. About four feet.

Q. How much was your deck above water forward?

A. A little over five feet from the water line to the deck.

Q. Then your bulwarks were about two feet?

A. They are two and a half forward—perhaps two feet eight.

Q. Do you know how high the steamer's stem is above the water.

A. I never measured it.

Q. Won't you explain what you mean by knight-heads, and where they are located?

A. The knight-heads are the two large timbers which pass up each side of the stem, each side of the bowsprit; the bowsprit laying between them as it passes into the pall post. Above the bowsprit of these knight-heads is a large oak frog hook bolted to them to keep the bowsprit from going up. The cat-heads consist of projecting timbers on top of the rail, about ten feet from the stem, used to get the anchors up to the bows with.

Q. When you say, therefore, that she struck somewhere between the knight-heads, you mean that she struck somewhere between these two points?

A. The first shock of the collision was between these two points, the nearest to the knight-heads.

Adjourned.

56 **FRIDAY,** *Sept.* 14, 1866.

Captain **WM. A. WRIGHT.**

Cross-examination resumed by Mr. **HALSEY:**

Q. State what the weather was after the collision, down to the time you went on board the "Electra?"

A. I have already stated what the weather was at the time of the collision. From the time of the collision, until the "Elm City" passed us, it gradually became more and more hazy. Being close to daylight there was also a difference in that respect. It was not thick enough, however, to obscure the "Electra" from us at any time after the "Elm City" passed us.

Q. You can state now how it continued to be after the "Elm City" passed you.

A. It continued to grow foggy after broad daylight; but the "Electra" was in view from our vessel. The whole of the "Electra" was in plain view until after I left our schooner to go on board the "Electra." When I arrived on board of the "Electra" it had become so thick that I could not see our schooner from her deck. We steamed for her, but it was not until we got half the distance from the "Electra" to the schooner that we got a sight of her.

Q. Was the schooner sinking?

A. The last I saw of her was on the "Electra's" deck. The water was then washing her deck, and very near her hatch combings. I have not seen a sign of her since.

Q. You know that she sunk?

A. Yes, sir. She was found sunk there the next day. That was the first I heard from her after I left.

Q. You have stated that at the time of the collision your bowsprit flew up. Explain to what that was owing.

A. It was owing to the carrying away of the heel, unshipping bowsprit, and splitting the stem where the bobstays were fast to it.

57 The bowsprit being thus started, when the heel was knocked away, the head-stays naturally become taut, and threw the outer end of it up.

By the COURT. Then I understand you to say that when this heel was knocked away, and the bobstays of bowsprit were gone, there was nothing to hold it down, the stays being taut, it naturally flew up.

A. Yes, sir.

By Mr. HALSEY:

Q. The cause of the bowsprit's being torn up, as you speak of, and going over to the leeward, is matter of reasoning with you, as I understand.

A. I saw the end of it go up.

Q. Yes; but the cause of its going up is mere matter of reasoning.

A. I was not alongside of it at that time, and could not say as regards the actual cause.

Q. You say your bow was some seven feet above the water. At what angle did the bowsprit lie with the deck?

A. I do not know as I could give a clear answer to that question, as if you were to inquire the height from the water to the end of the bowsprit.

Q. You have given us the height of the deck from the water. Now give us the height of the end of the bowsprit from the water.

A. The end of the bowsprit, the lower side, would not vary much from nine feet, and nine to nine and a half above water, to the best of my judgment.

Q. How high would be the end of the jibboom from the water?

A. I could not make an estimate with regard to that. I have something to guide me with regard to the end of the bowsprit, but nothing with regard to the end of the jibboom. The extreme end of the jibboom would be between thirteen and fourteen feet, carried out at that angle.

Q. Will you give us the length of the bowsprit and jibboom together, outside of the hull?

A. I could not with any great degree of accuracy.

58 Q. About how many?

A. The knight-heads to the extreme of the jibboom end, would be between forty and forty-five feet; nearer to forty-five, I should say.

Q. You stated in your direct examination that the weather continued to grow thicker—that is, it was not as clear at 2 o'clock as it was at 12 o'clock, when you came on deck, and that at the time of the collision no stars were visible. What obscured the stars?

A. It became somewhat cloudy during the latter part of the night.

Q. It was then thickening up during the night?

A. It was as usual in easterly weather in the spring of the year. In the latter part of the night, and towards day, rather cloudy and thickening; and then, after daylight, there was a slight fog.

DANIEL PATIENCE sworn.

Examined by Mr. INGERSOLL:

Q. What is your age?

A. I am forty-one.

Q. Where do you live?

A. British America, Quebec.

Q. What do you do for a living?

A. Go to sea, generally.

Q. How long have you been going to sea?

A. From eighteen to nineteen years, off and on.

Q. Where have you been to sea?

A. I have been to all parts. I have traveled the world at different times.

Q. Were you on board this schooner, the General S. Van Vliet, the night of the collision?

A. Yes, sir. I was at the wheel.

Q. How long have you been attached to the schooner?

A. It wanted five days of being five months.

Q. You say you were at the wheel at the time of the collision; when did you go on deck?

59 A. I came on deck at 12 o'clock.

Q. Did you stay on deck till the collision?

A. Yes, sir; the first two hours on watch at the lookout.

Q. And the other two?

A. At the wheel.

Q. When you left the lookout, did any one take your place?

A. Yes, sir; a man was in the watch along with me.

Q. Who was he?

A. George Mullenhoff.

Q. Who else was on deck during that time?

A. The captain was on deck before I came on, at 12 o'clock.

Q. Who had charge of the deck?

A. The captain.

Q. Did you see any lights before the collision?

A. Yes, sir; I saw lights just directly after we went about and stood to the northward; probably twenty minutes.

Q. I want you to go on and tell how that collision occurred.

A. Well, sir, within ten minutes afterward, a man on the lookout sang out there was a light. Then the captain went forward to see where the light was supposed to be. A few minutes subsequent he came and stood alongside of me and said, "The boat is right into us." We were, at that very instant, struck. When the boat came into us I was hauled over the wheel to the port side, and then back again to the starboard side.

Q. You had hold of the wheel all the time?

A. Yes, sir, until I was shaken off, when I came on the starboard side. Before I got up the mate and steward went out of the cabin.

Q. Now tell us how this steamer came into you.

A. Well, sir, she caught us right by the bow. All the planks nailed to our stem were torn away, and the upper part of the front piece was stoven in. She had two ports, for lumber, I suppose.

Q. Did the steamer change her course as she came down?

A. No, sir, not that I took any notice of. I was watching our vessel.

Q. How was your vessel heading?

60 A. North.

Q. How was the wind?

A. Northeast by east.

Q. How did you keep the sails?

A. Full.

By the COURT: Close on? Did you keep as near the wind as you could?

A. Yes, sir.

Q. During this period of which you now have been speaking, on this last tack, did you change your course at all?

A. No, sir, not a quarter of a point.

Q. Did you, at any time that night, see the schooner's lights?

A. Yes, sir.

Q. When?

A. They were burning well while I was on the lookout.

Q. That was from twelve to two?

A. Yes, sir.

Q. Did you see them after the collision?

A. Yes, sir.

Q. How soon?

A. A little after we were run down. The captain sung out, "Boys, you all go look and see if our lights are burning plainly."

Q. Did you look?

A. Yes, sir.

Q. What did you see?

A. I saw them burning plain—the starboard one. I went round to look at the port one and the flying jib was right around the port fore-rigging.

Q. How did you see it?

A. I pulled the sail out, and put my head in between the rattling and the shrouds of the rigging.

Q. Did I understand you to say that the captain said, at any time, it was no use?

A. No, sir.

Q. What did the captain say when he came aft?

A. He never spoke that I took notice of.

61 Cross-examination by Mr. HALSEY:

From where you were standing when the steamer and the schooner came together, could you see the steamer distinctly?

A. No, sir. I could see nothing as to what was damaged until daylight.

Q. Could you see how they came together, or was it so dark that you could not see very well ahead?

A. No, sir. I could not see from where I was, on what she came.

Q. It was so dark that you could not see where they came together?

A. I suppose she took our stem.

Q. I am asking what you could see?

A. I could not until it came to be daylight. I heard the crash.

Q. You heard the crash, but could not tell distinctly how they struck?

A. No, sir.

Q. You have spoken of the steamer's stem striking you. Could you see her stem strike you?

A. No, sir. It was a long way from our vessel's bow to the other vessel's wheel.

Q. Had you seen any vessel's lights?

A. I saw two during the watch on deck.

Q. How far could you see the vessel's lights?

A. I could not exactly tell.

Q. Did you see the steamer's lights?

A. Yes, sir. I saw two lights on the steamer.

Q. What lights were they?

A. Port light and a head light.

Q. How far off did you see those?

A. Probably the first time was ten minutes before the collision.

62 Q. Could you see the vessel's lights at that time a great deal further than you could see the vessel without any lights?

A. Certainly. I could not see the two lengths of herself without the lights.

Peter Farn's deposition.

I live in Cherry street, New York. Have a wife and three children. Am a sailor by occupation—sometimes work along shore as stevedore. I have been a sailor about twenty years. I was on board the schooner General Van Vliet in April last. I shipped on her from New York in October previous to the collision. I was on board of her about five or six months.

Q. The last voyage she made from New York, where did she sail?

A. She went to Maryland somewhere; I don't know the name of the place.

Q. What did you take on board there?

A. Oysters.

Q. How deeply were you loaded?

A. The decks were two feet out of water.

Q. Where were you bound with those oysters?

A. To New Haven, Connecticut.

Q. During your passage to New Haven did you meet with a disaster?

A. Yes, sir.

Q. Where was that?

A. It was in Long Island Sound, between Sands' Point Light-house and Eaton Neck, I think.

Q. At about what hour did that disaster occur?

A. It was handy to four o'clock in the morning, sir.

Q. Where were you at the time?

A. I was below, sir.

Q. When did you go below?

A. I went below at eight bells, sir—twelve o'clock at night.

Q. At twelve o'clock which way was the wind?

A. It was from the eastward, I believe.

Q. Could you lay your course?

63 A. No, sir; I don't know what the course was down there; we were on the wind, standing from one shore to the other.

Q. Did you tack any before twelve o'clock?

A. In our watch we tacked about every half hour.

Q. When did your watch commence?

A. At eight o'clock in the evening.

Q. At about what hour did you go through the Gate—Hell Gate.

A. I couldn't exactly tell you that, sir.

Q. Was it the fore or after part of the day?

A. It was the fore part of the day, some time.

Q. Did you sail through the Gate?

A, No, sir, we took a steamer a little this side of the Romar beacon, or buoy; the steamer left us after taking us through the Gate. We then came to anchor. It was blowing a fresh breeze.

Q. Which way was the wind then?

A. It was blowing up the Sound.

Q. When did you get under way again?

A. About half an hour or so afterwards.

Q. What time was it then?

A. It was after dinner time. I can't tell what hour it was.

Q. When you went below at twelve o'clock, what tack was the steamer standing on?

A. The north'ard and east'ard.

Q. How strong was the wind?

A. It was pretty well down then; 'twas a moderate breeze; we were going about five knots when I went below.

Q. You say you were below at the time of the collision. Where were you?

A. In the forecastle.

Q. Were you aroused in the forecastle?

A. A shock aroused me.

Q. On which side of the forecastle did you sleep?

A. I slept on the port side—lower bunk.

Q. On which side did the shock appear to be?

A. On the starboard side.

Q. Were you asleep at the time?

64 A. Yes, sir.

Q. Do you know what occasioned that shock?

A. Not until I got on deck. I then discovered it to be a steamboat.

Q. State what you saw and heard when you got on deck?

A. The first thing I done I got on the windlass; I hailed the steamboat. I got no answer the first time, and hailed her again. I got the answer, "Hulloo, what do you want?" I told them for to not go away and leave us—that we were sinking, and to stop and pick up the crew. I then ran aft; the captain hailed me and asked me, "How does things look forward there, Peter—very bad?" I told him, yes—and the steamer, she glided past and wrung our bowsprit's stanchions and all the weather rail—starboard rail, bulwarks, round to the leeward side. The starboard anchor was laying on the port side of the deck, before the windlass, and the port anchor lay across the bowsprit overboard in the water. Then the mate of our vessel, he had both pumps shipped, and got hands on to the pumps, and told us to clear away the boats and cut the falls, and get her hauled up alongside in readiness. Then Capt. Wright was coming forward, and called me, with a lantern, and we went down in the forecastle; the captain asked if there was any place to get down; he took off a little scuddle, or hatch, after we got into the forecastle, to get under the forecastle floor to see where the water came in, and he told me for to hold the light down for him. I held the light down there, but the wood ends prevented him getting into the leak. Then he told me for to clear away the upper parts, where we had our hawser laying; we got the hawser hauled off; then he tried to stick in some board and wood between the stem and the planks where the water was coming in. We got the hawser then hauled down under foot first, and he said for to leave it handy, that the steamer might make fast to us if she should come. But when we got on deck for to look on the stem outside, the steamboat was all in a blaze. Then we went aft, and the mate and three men was at the pumps; they kept pumping there, and
the captain went down in the forecastle again, where the light was
65 left burning. He went then poking about this place up forward
again the stem, and then he came on deck and went aft again.
He seen that the water was raising rather high down below, so we

commenced hauling our things out of the forecastle again; got our things into the boat loose; the others were pumping. We got several other little things into the boat, such as a bucket with some water into it, and at last, when we was leaving, I asked the captain if we would take the lanterns down out of the rigging; he said, "No; let them stand there." We got a nail and made the hatches fast to the deck, so that they wouldn't float away. I believe we got into the boat then.

Q. Did any other steamer speak you before you got into the boat?

A. Yes, sir; the captain got up on to the rail, and hailed one as she was coming past. I don't know her name; she answered the captain's hail, but did not stop. We went on board of the "Electra."

Q. What was the condition of your schooner when you left her?

A. The water was up to the forecastle deck in the peak—the schooner was settling all the time.

Q. State how the steamer lay with reference to the schooner when you came on deck?

A. The forward part of the steamboat's paddle-box was between our fore-rigging and cat-head, and she was crinchen along, taking everything with her at the same time.

Q. Was the steamer lying directly across your bow, or more nearly parallel with your vessel?

A. It was more across the bow.

Q. Was the steamer moving ahead at this time—the time you came on deck?

A. Yes, sir.

Q. Did she continue to move on until she passed you?

A. Yes, sir.

Q. During all the time she was passing you, how near was your vessel to her?

66 A. So that her guard streak was lapped over where our rail was; her guard was over our vessel all the way until she came to our stem; until the paddle-wheel came to our stem.

Q. Did you notice her paddle-wheel?

A. I noticed one of them.

Q. Was it still or revolving?

A. It was still—stopped.

Q. Did that wheel strike your vessel?

A. I don't know, sir. It was bent. It was rubbing along our covering board.

Q. How far back of your stem did the leak extend?

A. The leak was pretty much up and down the stem.

Q. Did you discover any timber or planks broken?

A. Yes, sir.

Q. Where were they?

A. About six or seven feet abaft the stem, on the starboard bow.

Q. Describe, as nearly as you can, the appearance and condition of the broken planks you have spoken of as about six feet abaft the stem.

A. They looked pretty well shattered up. About four feet from the stem there was a port hole, that was all stove in, and the planks about six pieces from the lower part of the port all the way to the covering board, was broken.

Q. How wide was the places broken?

A. About two and a half feet or three feet.

Q. How deep into the vessel was it broken in?

A. It bruised in all through her in one place, but only just the breadth of her timber, where it stove her timber. It stripped the covering board off the stanchions all the way along. The planks started away from the stem about four inches.

Q. The planks at the place you speak of where the timber was stove in—were they broken, and if so, to what extent?

A. They were shattered and splintered.

Q. How far from the stem was the after part of the port of which you have spoken?

A. I should judge it would be about three or four feet. I am not exactly sure.

67 Q. How far from the stem was the timber that was stove in through the ceiling?

A. It was right underneath where the cat-head was placed—either a little forward or after it.

Q. What was the condition of the planks just where the timber was stove in?

A. Them's are the ones that I mean was shattered.

Q. Between the place where the planks were so shattered, and the stem, what was the condition of the planks?

A. The upper part of the port was stove through altogether, and the lower part of the forward end of the port, started in a little.

Q. Between the forward end of the port and the stem, what was the condition of the planks?

A. Started from the stem about three and a half or four inches; may be a little over four inches, or under.

Q. When in the forecastle, did you see the place where this timber had been stove through?

A. No; the ceiling was there only bulged.

Q. Was that bulge directly where the timber was?

A. I don't know; I think so.

Q. How far was that bulge from the stem?

A. About six or seven foot.

Q. Was the lee bulwark stove at all?

A. Yes, sir.

Q. Where, and by what?

A. As far I could judge, by the winging of the bowsprit out, and the anchor.

Q. When you went below at 12 o'clock were there lights in the rigging of the schooner?

A. Yes, sir.

Q. Describe them; tell what they were, how high, &c.

A. They were between the seventh and eighth ratlan, as the light boxes were seized on there, about ten or twelve feet above the rail. I am not sure as to the height; the lights were red and green; the red on the port side, and the green on the other.

68 Q. Did you notice those lights when you went below at 12 o'clock?

A. Yes, sir; they were burning bright.

Q. Did you notice them when you came on deck at the time of the collision?

A. Yes, sir. I noticed one of them—the starboard one—it was burning brightly.

Q. Why didn't you notice the port light?

A. When the stays went round to the leeward with the bowsprit, the sails shut off the port light; the sails were set, and I could not see off the deck.

Q. Did you see it afterwards?

A. I can't be certain whether I looked at it afterwards or not.

Q. Did you notice it when you left the vessel?

A. I can't mind now, sir.

Q. You have said the bowsprit was twisted to the leeward, or port side of the vessel; describe its condition when you came on deck.

A. It was laying there with all the gear on it, and the big anchor laying across it under the port bow. I don't know whether it was sprung or not, but it was not broken.

Q. Where was the proper place for the starboard anchor? Where was it at the time of the collision?

A. It was up. The ring to the cat-head and the flukes on the rail well secured and lashed.

Q. How far was that cat-head from the stem of the vessel?

A. It was between that and the windlass, say seven feet or over from the stem.

Q. Did you notice the heel of the bowsprit?

A. Yes, sir.

Q. What was its condition?

A. It was good enough; but I believe where it stepped into the pall-bit it was split off; the pall-bit was split off, I mean.

Q. Did you notice the wind when you came on deck?

A. No, sir; I did not take notice of that.

Q. Did you notice whether it was blowing fresh or moderately at any time that morning?

69 A. More moderate than what it was when we went below.

Q. About what breeze?

A. About a three-knot breeze, or two and a half

Q. From what direction?

A. Right up the Sound, I believe; dead ahead.

Q. What was the condition of this night as to clearness at the time you came on deck?

A. It was pretty clear when I came on deck.

Cross-examined by Mr. HALSEY, counsel for respondent:

Q. Did the schooner's light, which you say was burning when you came on deck, continue burning brightly until you left on the Electra for New York?

A. It burned until we left in the boat to go to the Electra. After that I did not see it.

Q. At what hour was that?

A. I judged that to be about five o'clock, or rather more. I am sure.

Q. Was the Electra then laying near by?

A. About twice our length from us.

Q. How soon after did the Electra leave after you got on board of her?

A. After we got on board of her she came up and had a look at the schooner, and about half an hour after that she started for New York.

Q. On which side of the schooner did the Electra lay?

A. On the port side.

Q. Which side did she go when she run up to examine her?

A. On the port side.

Q. How near did the Electra come to her at any time?

A. About her own length, or a little nearer.

Q. Did she come in a position so that those on board of her could see the manner in which the schooner was injured?

A. Yes, sir.

Q. Which way was the schooner heading at the time the Electra came so near the schooner and made this observation?

A. I suppose about north or northwest; she must have been.

Q. What sails were then standing on the schooner?

70 A. Flying-jib, aud jib, and jib-topsail were still up, and the halyards gone; they would not come down; the peak of the foresail and spanker lowered down.

Q. Where was the bowsprit and head rigging?

A. Laying under the port bow.

Q. Did you then see that the bulwarks were stove on both sides?

A. I don't know how much of the port bulwark was gone; but the starboard one was all gone, from about the windlass and forward.

Q. When you first came on deck after the collision, was the stem of the schooner pointing to the side of the steamer?

A. No, sir; it was not.

Q. Where was it pointing?

A. It was pointing more like for the vessel's head—the steamer's head.

Q. Towards what part of the steamer?

A. She kept a-going all the time—gliding past all the time. You could not tell what part of the vessel it was pointing when she kept going all the time.

Q. About how many feet was the steamer's stem passed the bow of the schooner when you came on deck?

A. Far enough so as to allow the forward part of her paddle-box to come abreast of where our cat-head was.

Q. How many feet of the schooner from the stem did her guards then cover?

A. I could not exactly tell how many feet, but it was away over the covering board.

Q. Were the two vessels then in contact?

A. Yes.

Q. What do you mean by covering board?

A. It is the outer plank laid on the deck. I mean the water-ways.

Q. I mean how many feet abaft the stem of the schooner did the steamer's guard cover, when you first came on deck?

A. It only covered a little bit broadways; not fore and aft.

Q. Then were the two vessels laying crossways or parallel?

A. More across.

71 Q. When you first came on deck, was the bowsprit and port anchor both overboard?

A. Yes, sir.

Q. Where was the starboard anchor?

A. Laying on deck at the port side, before the windlass.

Q. How soon after the collision was you on deck?

A. I was pretty quick.

Q. Did you discover a leak except at the stem?

A. No, sir; could not see the water coming in any place then, but over the forecastle floor, from the forward direction, ankle deep.

Q. Was the starboard bow or side of the vessel cut or broken through?

A. It was broken through by the bowport in one place.

Q. I understood you in your direct examination to say that the ceiling was not broken through on the starboard bow. Was that so?

A. There is no ceiling where the port is at all.

Q. How was it either side of the port; was the ceiling stove?

A. No, sir; only bruised.

Q. Did you see the steamer Electra soon after you came on deck?

A. No, sir; I did not see her a good while after. I was considerably excited.

Q. Was she laying near by when you first saw her?

A. Yes, sir; about three or four lengths of the vessel.

Q. Were there boats out from the Electra?

A. There were boats out from somewhere. I don't know from where?

Q. What was the weather at the time you went on board of the Electra?

A. It was calm and clear; not very clear; you could see a right good ways.

Q. Was it foggy before the Electra left for New York?

A. No, sir; not much.

Q. Did the captain request the officers of the Electra to remain by the schooner?

72 A. There was one old gentleman in the pilot-house; I took him for the captain, and our captain spoke to him to try and do something with our vessel; to try to get her in closer to the shore or beach.

Q. Was it clear from the time you came on deck to the time you left for New York?

A. No, sir; it darkened up a little bit a little before we went on the Electra.

Q. Did you see the wheels of the City of Norwich in motion?

A. No, sir.

Q. How far did she run past you before she stopped?

A. I would guage her to be a quarter of a mile when I next saw her; then she was on fire.

Q. Where was she when you hailed her?

A. She was this kind of a triangle way. I have mentioned before she was neither right ahead nor alongside.

Q. Did she afterwards back up to you?

A. She never backed at all after she struck, while I was on deck.

Q. How long after the collision before you discovered the Norwich on fire?

A. Somewhere like half an hour, I should think.

Q. How long before she sunk?

A. It might be an hour before she sunk, or rather more, I dare say.

Q. What time did the collision occur?

A. Pretty near four o'clock. I did not know the quantity of minutes.

Q. Who was below with you?

A. A young Dutch chap by the name of Henry; don't know his other name; was in the forecastle with me; the mate was in the cabin; his name is Myre Wright.

Q. Who did you discover on deck when you first came out?

A. The first man I saw was the mate; he had just come up out of the cabin; then I seen George Mullenhoff; I saw him between 73 the fore and mainmast; then I seen the captain just abreast mizzen rigging, and I think I seen the cook next; his name is Augustus Peters, I think; then I seen Daniel Patience, who was standing at the pump when I came on deck.

Q. How many feet of water did the schooner draw?

A. About eight foot four or five; little over eight foot.

Q. How much did she draw at the time of the collision, or just before?

A. I am not very sure; I know the trip we went down she drew eight feet four. How much, with the oysters, I am not sure for certain.

Q. Was she loaded pretty deep?

A. Not quite so deep as she was with the coal the time we went to Newbern.

Q. How long had you known this vessel?

A. About six months.

Q. When were the lights set on the evening before the collision?

A. It might be between seven and eight o'clock; just a little before dark.

Q. By whom?

A. The steward put up the port one, and Dan Patience or George put up the other one. The steward would bring out the two out of the cabin, and give one to the man forward, whoever it would be.

Q. Were the lamps filled or trimmed during your watch?

A. No, sir.

Q. Were they or either of them taken from the schooner before you went on the Electra?

A. Neither of them was taken down from out of the rigging; they went down with the schooner.

Q. Were they both burning brightly when the Electra left for New York?

A. I could not tell.

Q. How long before leaving had you noticed them?

A. As I was getting in to the boat I noticed the starboard one, but I could not see the port one for the jibs.

Q. Was the starboard light burning brightly at that time?

A. Yes, sir.

74 Q. How far could such a light be seen when you left the schooner?

A. I suppose you could see it eight or ten miles any how.

Q. What time was it when you left the schooner?

A. I could not just exactly tell you; between five and six o'clock; it may be later and may be earlier; could not just say.

Examination adjourned to June 29th, at one o'clock.

JUNE 29th, 10 *o'clock.*

Present, Charles W. Newton, commissioner, and counsel for respective parties.

The re-direct examination of Peter Farn is proceeded as follows:

Q. Did you ever know those signal lights of yours to go out during the six months of the time you were on the vessel?

A. No, sir; nor never seen them trimmed from the time they were put up in the evening until once the watch of the deck took them down and blew them out, and laid them down by the side of the galley, and the steward took them aft.

Q. Are you accustomed or been in the habit of judging the distances on the water? Is your judgment good of distances on the water?

A. Which way, sir?

Q. In the night, judging of the distances of lights on the water; are you pretty good at it, or can't you tell?

A. No, sir; I never knowed anything about that, except to give a kinder rough guess.

PETER FARN.

75 *Deposition of George Mullenhoff.*

I reside in Chatham street, in the city of New York. I am asailor. I have no family. I am not a married man. I am expecting to go to sea soon. I was a sailor in April last, on board the schooner General Van Vliet—a three masted schooner she was. I remember a collision occurring in April last with the schooner General Van Vliet.

Q. With what vessel did the collision take place?

A. A steamer by the name of "City of Norwich," I believe.

Q. Where did that collision take place?

A. On Long Island Sound. I don't know exactly where it was.

Q. Was it in the night or day time?

A. It was in the night time. It was about ten minutes to four o'clock.

Q. Where was the General Van Vliet bound?

A. Bound to New Haven, sir.

Q. Do you recollect when you went through the Gate—Hell Gate?

A. Yes, sir.

Q. What time of day was it?

A. About ten o'clock in the forenoon of the same day the collision occurred.

Q. In going towards New Haven, did you have a head or fair wind?

A. I had a head wind.

Q. On that night when did your watch commence?

A. Twelve o'clock, midnight. I came on deck then.

Q. How was the wind blowing when you came on deck at twelve o'clock?

A. There was a light breeze.

Q. From what direction?

A. It was about north.

Q. How were you standing?

A. I don't know, sir.

76 Q. Were you on the wind, or free wind?

A. On the wind.

Q. Heading northerly or southerly—I mean at the time when you came on deck at twelve o'clock?

A. I don't know, sir.

Q. After coming on deck, did you tack?

A. Yes, sir.

Q. How long after?

A. I couldn't say, sir.

Q. Did you tack more than once before the collision?

A. Yes, sir.

Q. Do you recollect how many times?

Q. No, sir.

Q. From twelve o'clock until two o'clock, where were you stationed?

A. At the wheel.

Q. From two o'clock to the time of the collision, where were you stationed?

A. I stood on the lookout, on the forward part, by the forerigging and traveler.

Q. At the time of the collision were you on the northerly or southerly tack—standing north'ard or south'ard?

A. I don't know, sir.

Q. Had you your larboard or starboard tack on board?

A. Port tack, sir.

Q. On which side of your vessel were the booms?

A. Port side.

Q. When you left the wheel, what direction were you steering by compass?

A. I don't know.

Q. Were you at the time of the collision, or just before, was your vessel still on the wind?

A. Yes, sir.

Q. Before the collision did you see any lights?

A. Yes, sir.

Q. How long before?

A. About five minutes.

Q. In what direction from your vessel?

77 A. Saw them at the starboard.

Q. Were they at the windward or the leeward of you, sir?

A. To the windward.

Q. How were they bearing from you—off your bow, quarter, or midships?

A. I don't know exactly, sir.

Q. How many lights did you see?

A. I saw three lights.

Q. Were they on board of vessels, or steamers, or were they on shore?

A. On board of steamers.

Q. How many steamers' lights did you see?

A. Two steamers' lights.

Q. State what took place between the time you first saw the steamers' lights and the collision?

A. I saw that steamer a good while before they struck us, and I went after the captain and told him there was a light there. I went back again to the lookout, the same place I was before, which was by the forward rigging and traveler. The captain stood on the rail and looked at the steamer. He stood by the main rigging. I don't know exactly where.

Q. Did you remain at the lookout?

A. Yes, sir. I remained at the lookout about five minutes after I went and told the captain there were lights.

Q. What happened then?

A. When I saw the steamer come into us, I run aft.

Q. Did you hear the steamer's bell rung?

A. Yes, sir.

Q. How long before she struck you?

A. I don't know exactly how long. About a minute. She was about our vessel's length off when I heard the bell ring.

Q. Where did she strike you?

A. On the cat-head.

Q. What effect did it produce on your vessel?

A. It made a big hole and threw the starboard anchor over the port side.

Q. Did the schooner take in water?

A. Yes, sir.

78 Q. What became of your vessel?

A. We lowered a boat down first and hauled her along side; then the captain asked the man who came out of the forecastle, how big a hole she had? The man said she had an awful big hole—would go right down.

Q. Did the captain go into the forecastle?

A. Yes, sir.

Q. Take a lantern down?

A. Yes, sir; and went into the forecastle and looked around and then came out again.

Q. What was done with the sails—were they taken in or left standing?

A. Left standing. But they lowered the spanker down.

Q. What was done with the pumps?

A. We shipped the brakes and pumped.

Q. How long did you pump?

A. I don't know, sir; we pumped a good while. We could not keep the vessel free, the water kept gaining on us.

Q. What did you finally do?

A. We ran down and got some of our clothes up, when we found we couldn't hold her up, or keep her afloat. We got our clothes in the boat, and lowered the sails down and went in the boat.

Q. Where did you go to?

A. Went on board the steamer Electra.

Q. What became of the steamer City of Norwich?

A. She burnt up.

Q. How soon did she burn up after the collision?

A. As soon as she passed a little ways, she took fire and burned.

Q. Did you come off in the Electra to New York?

A. Yes, sir.

Q. About how fast were you going just before the collision?

A. About three knots.

Q. From the time that you first saw the lights until the collision, did your vessel in any way change her course?

A. I don't know, sir.

Q. Did you observe any change?

79 A. No, sir.

Q. Was it a clear or foggy night?

A. It was clear then.

Q. Did you have lights set?

A. Yes, sir.

Q. How many?

A. Two.

Q. Where were they?

A. One on starboard, and one on port side—forward rigging.

Q. State the color of the lights?

A. Red and green—red on the port side and green on the starboard side.

Q. About how high were they in the rigging?

A. About fourteen feet from the rail.

Q. How many ratlins up were they?

A. I don't know—about seven or eight.

Q. Did you notice those lights after the collision?

A. Yes, sir. They were burning as good as they ought to be.

Q. As well as they ever were?

A. Yes, sir.

Q. Were there screens or boxes to those lights?

A. There were boxes.

Q. Did the steamer's wheels stop after her bell rang, and before she struck you?

A. I don't know, sir.

Q. What were you loaded with?

A. Oysters.

Cross-examined by Mr. HALSEY, counsel for respondent:

Q. What was your employment on board the schooner?

A. Sailor.

Q. How long had you been so employed?

A. Twenty-nine days.

Q. Where did you ship?

A. At New York.

Q. How long have you been engaged as a sailor?

80 A. Four or five years.

Q. How long have you been in this country?

A. I came here last May a year ago.

Q. Where from?

A. From Bremen.

Q. How many persons were on deck between twelve o'clock and the collision?

A. Three.

Q. Who were they?

A. Captain Wright, a man named Dan—don't know his other name, and myself.

Q. Who was at the wheel, and who on the lookout?

A. I stood the first two hours at the wheel, from twelve to two o'clock; then the other man came to the wheel—Dan.

Q. Where was the captain stationed?

A. By the wheel, on the top of the cabin.

Q. Did he give directions to the man at the wheel how to head?

A. Yes, sir.

Q. What tack was the schooner upon when you took the wheel?

A. I don't know, sir.

Q. What tack when you left it at two o'clock?

A. I don't know.

Q. Had she tacked between twelve and two o'clock?

A. Yes, sir.

Q. Did she tack between two o'clock and the time of the collision?

A. Yes, sir.

Q. How many times?

A. I don't know, sir.

Q. In what direction was the wind during the time you was at the wheel?

A. I don't know, sir.

Q. What course did you steer when you had the wind upon your starboard side?

A. Steered by the wind. Don't know what course.

Q. What tack were you upon when the collision occurred?

81 A. Port tack, sir.

Q. How long had you been on that tack before the collision occurred?

A. Half an hour, I guess.

Q. How long had you been on that tack before you saw the steamer's lights?

A. About twenty-five minutes

Q. What lights of the steamer did you see?

A. I saw first a head light; a little while after saw the side light, a green and red color.

Q. You saw both side lights then?

A. Yes, sir.

Q. Did you see her stern light?

A. No, sir. I don't recollect of seeing it.

Q. In what direction from your vessel did the steamer's lights bear when you first discovered them?

A. Starboard from us.

Q. How many points on your starboa'd bow?

A. I don't know.

Q. About how many?

A. I don't know.

Q. Did you know the compass?

A. Yes, sir.

Q. Was the steamer's lights as many as four points off your vessel's bow when you first saw them?

A. I don't know nothing about it, sir.

Q. Did you think they were more or less than four points?

A. I couldn't say.

Q. Was you standing at the starboard or port side when you first saw the steamer's lights?

A. Starboard side.

Q. Did you continue to see both of the steamer's side lights until you left the lookout to go aft, just before the collision?

A. No, sir. I don't know; I saw one of them.

Q. Which one?

A. The port light.

Q. In what direction was the steamer heading?

A. I don't know, sir.

82 Q. Was she coming directly towards you?

A. She was heading towards our starboard bow.

Q. What part of the steamboat struck the schooner?

A. Her stem, I believe.

Q. Have you any doubt about it. Do you know or not that that was the case?

A. I don't know exactly. I believe the steamer caught us with her stem.

Q. Where was you when you say the steamboat run into you, stem on, as you believe?

A. I ran aft.

Q. Who was left forward?

A. Two men asleep in the forecastle.

Q. Was there any person forward on the lookout, except yourself, from the time you first saw the steamer's lights until the time you left to go aft just before the collision?

A. No, sir.

Q. What part of the schooner was struck, as you claim, by the steamer?

A. Right back of the cat-head.

Q. On which side?

A. Starboard side.

Q. Was her bowsprit and head gear gone after the collision?

A. Yes, sir; the bowsprit was split all to pieces.

Q. Were her bulwarks stove on both sides?

A. I believe they were.

Q. How many feet abaft the stem on each side?

A. I don't know exactly.

Q. When were the lights set on the schooner?

Cross-examined by Mr. HALSEY, counsel for respondent:

Q. What was your employment on board the schooner?

A. Sailor.

Q. How long had you been so employed?

A. Twenty-nine days.

Q. Where did you ship?

A. At New York.

Q. How long have you been engaged as a sailor?

80 A. Four or five years.

Q. How long have you been in this country?

A. I came here last May a year ago.

Q. Where from?

A. From Bremen.

Q. How many persons were on deck between twelve o'clock and the collision?

A. Three.

Q. Who were they?

A. Captain Wright, a man named Dan—don't know his other name, and myself.

Q. Who was at the wheel, and who on the lookout?

A. I stood the first two hours at the wheel, from twelve to two o'clock; then the other man came to the wheel—Dan.

Q. Where was the captain stationed?

A. By the wheel, on the top of the cabin.

Q. Did he give directions to the man at the wheel how to head?

A. Yes, sir.

Q. What tack was the schooner upon when you took the wheel?

A. I don't know, sir.

Q. What tack when you left it at two o'clock?

A. I don't know.

Q. Had she tacked between twelve and two o'clock?

A. Yes, sir.

Q. Did she tack between two o'clock and the time of the collision?

A. Yes, sir.

Q. How many times?

A. I don't know, sir.

Q. In what direction was the wind during the time you was at the wheel?

A. I don't know, sir.

Q. What course did you steer when you had the wind upon your starboard side?

A. Steered by the wind. Don't know what course.

Q. What tack were you upon when the collision occurred?

81 A. Port tack, sir.

Q. How long had you been on that tack before the collision occurred?

A. Half an hour, I guess.

Q. How long had you been on that tack before you saw the steamer's lights?

A. About twenty-five minutes

Q. What lights of the steamer did you see?

A. I saw first a head light; a little while after saw the side light, a green and red color.

Q. You saw both side lights then?

A. Yes, sir.

Q. Did you see her stern light?

A. No, sir. I don't recollect of seeing it.

Q. In what direction from your vessel did the steamer's lights bear when you first discovered them?

A. Starboard from us.

Q. How many points on your starboa'd bow?

A. I don't know.

Q. About how many?

A. I don't know.

Q. Did you know the compass?

A. Yes, sir.

Q. Was the steamer's lights as many as four points off your vessel's bow when you first saw them?

A. I don't know nothing about it, sir.

Q. Did you think they were more or less than four points?

A. I couldn't say.

Q. Was you standing at the starboard or port side when you first saw the steamer's lights?

A. Starboard side.

Q. Did you continue to see both of the steamer's side lights until you left the lookout to go aft, just before the collision?

A. No, sir. I don't know; I saw one of them.

Q. Which one?

A. The port light.

Q. In what direction was the steamer heading?

A. I don't know, sir.

82 Q. Was she coming directly towards you?

A. She was heading towards our starboard bow.

Q. What part of the steamboat struck the schooner?

A. Her stem, I believe.

Q. Have you any doubt about it. Do you know or not that that was the case?

A. I don't know exactly. I believe the steamer caught us with her stem.

Q. Where was you when you say the steamboat run into you, stem on, as you believe?

A. I ran aft.

Q. Who was left forward?

A. Two men asleep in the forecastle.

Q. Was there any person forward on the lookout, except yourself, from the time you first saw the steamer's lights until the time you left to go aft just before the collision?

A. No, sir.

Q. What part of the schooner was struck, as you claim, by the steamer?

A. Right back of the cat-head.

Q. On which side?

A. Starboard side.

Q. Was her bowsprit and head gear gone after the collision?

A. Yes, sir; the bowsprit was split all to pieces.

Q. Were her bulwarks stove on both sides?

A. I believe they were.

Q. How many feet abaft the stem on each side?

A. I don't know exactly.

Q. When were the lights set on the schooner?

A. As soon as it got dark.

Q. About what hour?

A. I don't know.

Q. What were the lamps filled with for light?

A. I don't know what it was.

Q. Were the lamps trimmed after you came on deck at twelve o'clock?

83 A. I don't know whether they was trimmed or not, but they were burning bright.

Q. Did you do anything to the lights?

A. No, sir.

Q. Did you see any one do anything to them.

A. No, sir.

Q. How far at or about the time of the collision could you see lights such as the steamer carried?

A. I saw the steamer's lights about five minutes before.

Q. How far off was she when you first saw them?

A. I don't know, sir.

Q. About how far, according to your best judgment?

A. I couldn't say.

Q. Did you see the lights of any other steamer before or after you saw the lights of the "City of Norwich?"

A. I saw the lights of the steamer City of Norwich first.

Q. How soon after did you see the lights of the other steamer?

A. A couple of minutes.

Q. What lights did you see on that steamer?

A. I saw first his head lights, and afterwards his side lights too.

Q. How was that steamer heading?

A. She was heading the same way with the other.

Q. Did you discover her lights before you went aft to inform the captain that you discovered lights?

A. Yes. I saw the lights of both steamers first.

Q. Was the weather thick and hazy at this time?

A. No, sir. It was clear weather then; it was starlight.

Q. About how many knots breeze.

A. About three knots.

Q. How was your vessel affected by the collision in her course.

A. Yes, sir; she sheered us over to port.

Q. Did you drop alongside of the steamboat?

A. No, sir.

Q. Did you fall astern of the steamboat?

A. No, sir; I don't think we did.

84 Q. About how far was the steamer from the schooner when you left your post forward.

A. It was close by us then.

Q. Can't you state any nearer?

A. It was about eight feet.

Q. Were her wheels in motion at that time?

A. I don't know.

Q. Did the people from the steamboat hail the schooner, to know what condition she was in after the collision?

A. No, sir; they said nothing to us.

Q. Did they back down or come nearer to you after the motion of the steamboat was stopped?

A. No, sir.

Q. From what you saw of the course of the steamer and of the schooner, should you say it was possible for the schooner to have run her stem into the steamer near midships?

A. No, sir.

Q. What sails had the schooner set at the time of the collision?

A. Had the fore and main topsail furled; the foresail and mainsail and spanker jib, flying jib and jib topsail, and mizzen gaff-topsail were set.

Q. Did you have any cargo on deck?

A. No, sir.

Re-direct resumed by Mr. HUNTLEY, counsel for libellants:

Q. After you first saw the steamer's lights, did the captain go forward once, or more than once?

(Objected to by respondent's counsel as leading.)

A. I don't know how many times he was forward.

Q. Did he go forward at all after you first saw the steamer's lights?

(Objected to by respondent's counsel as leading.)

A. Yes, sir; he was out forward once and looked at her lights?

Q. What stove the port bulwark?

A. The anchor did that, I believe. I am not sure.

85 Re-cross resumed:

Q. When you first saw the steamer's lights, I understood you that you went aft and told the captain; was that correct?

A. Yes, sir; I went aft and told the captain there was a light.

Q. Did the captain then come forward?

A. I don't know.

Q. If he did not come forward then, when did he come?

A. It was not very long afterwards; I don't know how long.

Q. When he did come, were both side lights of the steamboat City of Norwich visible?

A. I don't know.

Q. Did you and the captain both look at the City of Norwich when he came forward?

A. After I went aft and told the captain, I went forward; I don't know where the captain stood exactly.

Q. Did the captain come forward when you told him of the lights, or did he stand aft and look at them?

A. He came forward when I told him.

Q. Whereabouts did the captain stand when he came forward?

A. He stood midships somewhere; I don't know exactly where.

Q. Did you at that time see both of the steamer's side lights?

A. I don't know, sir.

Q. Did the captain go aft soon after he came forward?

A. Yes, sir; he went aft again by the wheel.

GEORGE MOHLENHOFF.

Harry Rodick's deposition.

I live in Chatham street, New York City. Am not married. Am a sailor; have been a sailor six years. I was on board of the General Van Vliet at the time of the collision. I was asleep in the forecastle when the collision took place. The water run over me, which woke me up.

86 Q. Did you hear any noise before you felt the water run over you?

A. Yes.

Q. What did you hear?

A. I heard the steamer break into us; when the water ran over me then I ran up on deck.

Q. Which side of the forecastle did you sleep on?

A. Starboard side, the lower bunk.

Q. Did you sleep with your head or feet toward the stem?

A. Head toward the stem.

Q. How far from your head was the stem?

A. About seven or eight feet, I guess.

Q. Where did you feel the water running on to you—what part of your body?

A. On my head.

Q. Did you jump up at once when you felt the water?

A. Yes, and went on deck.

Q. What did you see when you got on deck?

A. I ran aft to look after the boat.

Q. Did you see any steamboat?

A. Yes.

Q. Where was she?

A. On the port side.

Q. Was she moving or not?

A. I can't tell.

Q. Was she touching you at that time, or was she a little ways from you?

A. Little ways from the vessel.

Q. What did you do after you went aft to see about the boat?

A. Lowered the boat down and hauled her alongside.

Q. Then what did you do next?

A. Got my orders to pump, and went to the pump and pumped a good while.

Q. What did you do after you got through pumping?

A. I went forward.

Q. What did you do there?

A. Went down in the forecastle and put my clothes on deck, and then put them in the boat, and then lowered the sails down.

87 Q. What sails?

A. Foresails.

Q. Did you see any lights on your vessel?

A. Yes.

Q. Where were you when you saw them?

A. When I went to go down in the forecastle.

Q. In what part of the vessel was you when you saw the lights?

A. Forward, on the starboard side, on the forecastle door.

Q. What light did you see?

A. Starboard light—the green light.

Q. Where was it?

A. In the forward rigging.

Q. How was it burning—was it most out, or bright, or how?

A. It was burning very bright.

Q. Did you see the port light?

A. No, sir.

Q. Why not?

A. The foresails hung down around the rigging.

Q. Do you know whether it was foggy or not then?

A. It was about clear; I could see the stars.

Q. Did you see the condition of your vessel, whether it was injured?
A. No, sir; I did not look.

Cross-examined by Mr. HALSEY, counsel for respondent:

Q. What time did you go below that night?
A. Twelve o'clock.
Q. Who was in your watch on deck?
A. There was another fellow and a mate.
Q. What was the name of the other fellow?
A. Peter; don't know his other name.
Q. When you came on deck did you go directly aft?
A. Yes.
Q. Did you see the steamer City of Norwich first from the stern of the schooner?
A. Yes, sir.
Q. From which side of the schooner?
88 A. Port side.
Q. Where did she lay—was she off your stern or beam?
A. I don't know.
Q. About how far off was she?
A. I don't know.
Q. Judging by your vessel's length, how far was she?
A. I did not look after her.
Q. Was she going ahead pretty fast?
A. I don't know.
Q. Which way was she going?
A. I don't know which way she was going.
Q. Was her bow towards you or from you?
A. I don't know.
Q. Could you see her plain?
A. Yes, sir.
Q. Did you see the steamer Electra?
A. Yes, sir.
Q. How near did she come to you?
A. Not far off.
Q. Did you see the steamer City of Norwich on fire?
A. Yes, sir.
Q. Which was the nearest to the Norwich when she was burning, the Electra or your schooner?
A. I don't know.
Q. Did the Electra pass you?
A. Yes, sir.
Q. Did she pass near you?
A. Yes, sir.
Q. Did you hear any one from the City of Norwich hail the schooner?
A. I don't know.
Q. When did you leave the schooner?
A. About twenty minutes past five.
Q. Where did you go to?
A. On board the Electra.
Q. Did you have a long pull?
A. Not long.
Q. Where abouts was she laying from you?
89 A. I don't know.
Q. Was she ahead, or how?
A. About astern, little a starboard.

Q. When you pulled off from the schooner, toward the Electra, where did she lay from you?

A. I guess about starboard.

Q. How long after you went on board of her before she left for New York?

A. I don't know.

Q. Could you see the Electra all the time after she came up and passed you until you went on board of her?

A. I don't know.

Q. How long after the Norwich sunk before you went on board the Electra?

A. I don't know.

Q. Did the captain ask you to look at the schooner's lights?

A. Not me.

Q. Was the weather at all thick or foggy that night?

A. It was not thick.

Q. How was it when you left the schooner?

A. It was not thick.

Q. Was it starlight all the time?

A. I don't know; I forgot it.

Q. Was the night dark when you came on deck?

A. No, sir.

Re-direct resumed:

Q. Where was you born?

A. In Bremen.

Q. How long have you been in this country?

A. Four months.

Q. When did you come from Bremen?

A. In March.

Q. How long have you been a sailor?

A. Six years.

Q. Where did you go to sea before you came to this country?

A. West Indies, North and East Sea, in Europe.

H. RODICK.

90 *Deposition of Gustave Peters, (colored man.)*

I live at 25 Baxter Street, New York City. I have no family. I am a cooking steward, on the water, by occupation. Have been cooking steward for four years. I was on board the schooner General Van Vliet at the time she had an encounter with a steamer, in April last, in Long Island Sound.

Q. Where were you at the time of the collision?

A. I was in the cabin.

Q. Were you asleep or awake?

A. Asleep.

Q. State what awoke you.

A. Heard a voice at the cabin door saying the schooner was sinking.

Q. What did you then?

A. I started from the cabin and run up aloft in the mizzen rigging. I staid there for about five minutes, then we had orders *for cabin* to lower the boat. We lowered the boat alongside, then the captain gave orders to try to pump.

Q. Did you see any other vessel alongside of you?

A. I saw the City of Norwich.

Q. Where was she?

A. She was a little ways from us. I can't say what the distance was.

Q. Did you go forward?

A. Yes, sir: I went forward.

Q. What did you see forward?

A. I saw the bow; our bow was cut right off.

Q. How did it look?

A. I took no notice of it.

Q. Did you notice whether the schooner's lights were burning?

A. Yes, sir; I noticed them.

Q. Where were they, and how were they burning as to brightness?

A. They were on the fore-rigging, one on each side, and burning as well as when they were put up.

91 Q. Did you put them up that night?

A. I put up the port light—the red light—and gave the other to one of the watch.

Q. Did you trim the lamps that night yourself?

A. Yes, sir.

Q. How did you trim them?

A. I cut the top of the wick off and filled them with signal oil?

Q. Whose oil is it—whose patent?

A. All I know, we got it from Mills & Crawford.

Q. How long had you been on that vessel?

A. We shipped in the month of October, 1865.

Q. Had you ever known those lights to go out in the night?

A. No, sir.

Q. Would they burn freely and brightly all night long, without trimming?

(Objected to by respondent's counsel as leading—and because the witness can't know.)

A. I never had any trouble trimming them, and always saw them burning brightly in the morning when I got up.

Q. Between the time the lights were set at dusk, and the time they were put out in the morning, did you ever trim them, or know of their being trimmed?

A. No, sir.

Q. Was it the duty of any one else on board the vessel to trim the lamps beside yourself?

A. No, sir. It was my duty, and I always done it.

Cross-examined by Mr. HALSEY, counsel for respondent:

Q. What hour did you go below on the night of the collision?

A. At eight o'clock.

Q. Was you on deck again until after the collision?

A. No, sir.

Q. Was it your custom to go below at eight o'clock in the evening, and remain below until the next morning?

(Objected to by libellant's counsel as immaterial.)

92 A. Yes, sir.

(Libellant's counsel withdraws above objection.)

Q. At what hour did you leave the schooner and go on board of the Electra?

A. I can't say exactly; I believe it was about half past five.

Q. What hour when the Electra left for New York?

A. I suppose it was about half past six—don't know certain.

Q. Were the schooner's lights burning brightly up to the time the Electra left?

A. I did not take any notice.

Q. Were they burning brightly when you left the schooner?

A. Yes, sir.

Q. When did you last wick the lamps?

A. I trimmed them in the afternoon.

Q. When did you last put in wick?

A. About three days before the collision.

Q. What kind of wick did you use?

A. I don't know the name of the wick. It was kind of a ball wick—had to twist it myself—it was round in small threads, and all I had to do was to roll it up just big enough to fit the tubes.

Q. What kind of lamps were used?

A. I could not describe them exactly. They were glass lamps—one side glass and one tin or iron, I dont know which.

Q. What quantity of oil would each lamp hold?

A. They could hold about three-quarters of a pint each.

Q. How many wicks or tubes were there to each lamp?

A. Three tubes.

Q. Did you have three wicks in each lamp?

A. Yes, sir.

Q. Were they all lighted?

A. Yes.

Q. Did you fill them daily?

A. Yes.

Q. Where was the oil procured that was used?

A. From Mills & Crawford, of New York.

Q. When did you get it?

A. Before we left New York to go to Maryland.

93 Q. How much did you get?

A. Can't say, exactly.

Q. About how much did you get?

A. A full can that held about two and a half or three gallons.

Q. What other lights or lamps did you have on the schooner?

A. Besides the signal lights?

Q. Yes.

A. Two side lights, one signal, and one small lantern and a binnacle, and four small ones for the cabin, and one for the forecastle.

Q. Was this oil used for all these lamps?

A. No, sir.

Q. What oil was used for other purposes than the side lights?

A. We used kerosine oil for all the lamps except the side lights.

Q. What kind of oil was used for the side lights?

A. Signal oil.

Q. What did you keep it in?

A. In oil cans.

Q. At the time of the collision and afterwards, until you left, could the schooner's lights be seen distinctly?

A. I could see the starboard light well enough from the forward, and the head sails was right in the port side; could not see the port light very well from forward; but if I stood on the port side of the cabin could see the port light against the head sail.

Q. Whereabouts on the schooner after the collision did you stand when you saw the starboard light?

A. I stood forward just by the windlass—forward of the windlass.

Q. How far forward?

A. No distance at all; I could touch the windlass with my knees.

Q. Which side of the vessel?

A. Starboard.

94 Q. What was you doing forward there?

A. I was called forward by the captain to see if that light was burning, for proof that it was burning.

Q. How soon was this after the collision?

A. About ten minutes after the collision.

Q. Was it before or after you went into the mizzen rigging?

A. After.

Q. Did he muster the whole ship's company for this purpose?

A. The whole company was not there when I was.

Q. Did he select you particularly as a witness?

A. He selected me.

Q. Did he go forward with you?

A. He was forward ready when he called me.

Q. Did any one go forward with you?

A. No, sir; no one went forward with me.

Q. Where were the rest of the crew when you went forward to witness the light?

A. They were all on deck; don't know whether they seen the light before I did or after.

Q. Where was the Electra at this time?

A. She was off about half or three-quarters of a mile.

Q. Did you see her lights then?

A. I seen the steamer.

Q. Did you see her lights then?

A. No, sir.

Q. Then you could see the steamer, but could not see her lights?

A. I never took no notice of the lights.

Q. How did she bear from you?

A. Never took no notice.

Q. Was she laying ahead or astern of you?

A. I believe she was lying just astern of us, but not exactly.

Q. On which side?

A. Port side, I believe.

Q. Was she under way or still?

95 A. I don't know.

Q. Had the steamer City of Norwich sunk before you came on deck?

A. No, sir; she had not sunk before I was called out of the cabin.

Q. How soon did she sink after you came up?

A. I suppose it must have been twenty minutes before I seen the blaze; I don't know whether she sunk at the very time I see the blaze.

Q. Had she sunk before you were called forward as a witness to the lights?

A. No, sir.

Q. Where was the Norwich laying when you came on deck?

A. She was on the port side.

Q. How far off?

A I can't say exactly; she was under full speed when I saw her; she did not stop any.

Q. You mean full speed ahead?

A. Yes, sir.

Q. How many revolutions were her wheels making a minute at that time?

A. I don't know, sir.

Q. Were her wheels moving pretty fast?

A. I believe they were.

Q. You went into the port rigging then?

A. No, sir; the starboard rigging.

Q. Where was you when you saw the steamer on the port side of the schooner, under full headway, with her wheels revolving rapidly, or pretty fast, as you say?

A. I was in the starboard rigging; that was when I was first called out of the cabin.

Q. About how many feet was the steamer then from you, according to your best judgment?

A. I don't know exactly; when I was called out of the cabin, I should suppose she was a vessel's length, or, perhaps, two; and when I was up in the rigging, I should suppose she was three lengths of our schooner off.

96 Q. Did she continue right on under full headway?

A. I don't know, sir; when I came down from the rigging I did not look at the steamboat until I saw the blaze.

Q. How far was she then when you saw the blaze?

A. I should judge she was about half a mile; can't exactly say.

Q. How many boats did the schooner have?

A. One.

Q. Where was it carried?

A. On the davits—stern.

Q. How near did the Electra come to the schooner at any time?

A. I don't know, sir.

Q. When you discovered that the steamer was on fire, did any of the crew of the schooner leave in your boat and go toward the steamer?

A. No, sir.

Q. How long was the steamer on fire before she sunk?

A. I don't know, sir.

Q. After the steamer sunk, did any of your crew pull off towards where she disappeared?

(Objected to by Mr. Huntley, counsel for libellants.)

A. I don't know when the steamer disappeared; I saw it blazing all around there; I don't believe we pulled off toward the place.

Q. How near was the Electra to the Norwich at the time she sunk?

A. I don't know.

Q. Was she nearer to the Norwich than you were?

A. I believe she was.

Q. Was she not much nearer?

A. She was nearer than we were; don't know how much nearer.

Q. Did you hear any one hail the schooner from the City of Norwich?

A. I heard "Halloo, what you want?"

Q. What reply was made from the schooner?

97 A. One of the men sung out, "Stop, we are sinking," and there was no reply made then. He sang out the second time and the answer came from the Norwich, "Halloo, what you want?" There was no reply made—after that she was out of hearing. We hailed the steamer first, and said, stop, for we are sinking, and the Norwich made no reply.

Q. Who hailed the Norwich?

A. Peter Farn, the last witness.

Q. Did the steamer back down to the schooner at all?

A. No, sir.

Q. Did she keep right on, under full headway?

A. She went on; she never made any stop.

Q. Did you observe the schooner's light until the captain called you forward, as you have stated, to look at it?

A. No, sir; not before.

Re-direct resumed:

Q. How long a time would the wicks of the signal-lamp burn; that is, how many nights?

A. About a week or so.

Q. At that season of the year, how much oil would be left in the morning, when the lights would be put out?

A. About half-filled.

Q. I understand you to say that that oil was called signal oil?

A. Yes, sir.

Q. You have been asked if the captain selected you as a witness to the burning of the lights. State just what he said.

A. As soon as I come out of the rigging, the captain was forward, and he told me, "Steward, come here and look at the light." I went and see it was burning, as well as when it was put up that night.

Q. Did you notice how the weather was as to clearness at the time of your being in the rigging?

A. I believe it was a little smoky.

Q. Could you see the "Electra" plainly at that time?

A. She could be seen plain enough.

98 Re-cross resumed:

Q. You say that the captain asked you to look at the light, and see that it was burning; which light was it that he asked you to look at?

A. The starboard light; but I did not go aloft to look at it because I see it was burning.

Re-direct resumed:

Q. Do you know whether the port light was burning?

A. Yes, it was.

Q. Brightly?

A. Yes.

Re-cross resumed:

Q. Did you see the port light at all?

A. I seen the shade of the light on the sails; that was plain enough.

GUSTAVE PETERS.

Rufus E. Hine's deposition.

Examined by Mr. INGERSOLL:

1. State your name, age, residence, and occupation.

A. My name is Rufus E. Hine; my age twenty-five; my residence is 45 Portsea street, New Haven; my occupation a seaman.

2. How long have you followed the sea, and in what capacity?

A. I have followed the sea since June, eleven years ago, from that of boy, up to chief mate now.

3. Where were you on the 17th of April, 1866?

A. I was on board the schooner Chieftain, bound from Annamessic, Maryland, to Fair Haven, Connecticut.

99 4. While on that voyage on that day, did you see the schooner General Van Vliet; if so, when and where did you first see her, and under what circumstances?

A. I did see her, and first saw her off Hart Island. Hart Island is at the head of Long Island Sound. We were lying at anchor at the time; she was under way and beating to the eastward, and we got under way directly as soon as she passed, and followed her up.

5. How long did you follow her up, and what were your relative positions while she was in sight of you, and what the distance between you?

A. When we were well clear of Hart Island she was about five miles to the windward of us. We gained on her gradually, until dark, when she stood about four miles from us. At dark, when he put his lights out, I saw them, and we kept his lights in sight throughout the night, when he was on his port tack, until a quarter past three in the morning.

6. Did you, during that night, or the next morning, see a steamer burning; if so, when did you first see the fire, and where were you?

A. I did see a steamer burning at twenty minutes to four o'clock in the morning, by our clock. The fire was about three miles distant from us, bearing about east, and I should judge we were about eight miles to the westward of Eaton's Neck light; I cannot tell exactly.

7. How long before you first saw the fire did you see the lights of the Van Vliet?

A. I saw the Van Vliet's lights nearly twenty-five minutes before I first saw the fire break out—good twenty-five minutes.

8. How far distant were they from you, and how did they bear?

A. I should judge they were about three miles distant, and bore about east-southeast.

9. Did you see the lights of any other vessels before you saw the fire on the steamboat?

A. I see lights of vessels throughout the night, of a great many steamers and sailing vessels bound to the westward.

10. State more particularly, if you are able.

100 A. There was a schooner in our company about a mile distant, beating to the windward, the same as we were. Her lights had been in sight throughout the night, and were in sight at the time of the fire. At the time of the fire I saw a steamer apparently going towards the fire. There was a steamer's lights in sight going westward, which passed us about ten minutes before I saw the fire.

11. How was the weather at the time you first saw the fire; and how had it been during the night before that?

A. The weather was clear at the time I saw the fire, and had been clear throughout the night.

12. How was the wind at and during the same time?

A. The wind was about northeast-by-east about the time, and that was the general average of the wind through the night.

13. How was it in point of strength?

A. The wind was variable, blowing from one and a half to four knots an hour during the night.

14. Who had charge of the deck of the Chieftain during the watch from twelve to four?

A. I did.

15. Were you not on deck during that whole watch?

A. I was.

16. How did the time of your clock compare with New York time?

A. We were from fifteen to twenty minutes slow.

17. At and preceding the time when you saw the burning steamboat, did you or not see the lights of any light-houses; and if so, of what?

A. I did see the lights of three light-houses at the time—Norwalk Island light, Eaton's Neck light, and Captain's Island light.

18. Do you purpose leaving the country; and if so, when and where do you purpose going?

A. I intend to leave the country probably within the space of three weeks; I shall go to sea; my destination is uncertain. My services are now engaged on board the brig Princess Alice, as chief officer.

101 Cross-examined by **John S. Beach**, esq., proctor for defendant:

1. To what port did the Chieftain belong?

A. To New Haven.

2. What had been her voyage at the time you speak of, and how long had it continued?

A. Her voyage had been from New Haven to Annamessic, in ballast; there she took in a cargo of oysters, and was bound for Fair Haven, Connecticut, at the time. The length of the voyage was about three weeks.

3. At what time in the day did you see the Van Vliet at Hart Island?

A. Between half-past three and four o'clock in the afternoon.

4. Were there any other vessels in sight, beating to the eastward, between the time you started from Hart Island and before dark?

A. There were.

5. About how many?

A. There was one ahead of us, between us and the Van Vliet, and two or three others astern.

6. Were you on deck from the time you left Hart Island until dark?

A. I was.

7. How soon, if at all, did you leave the deck?

A. I left the deck at eight o'clock in the evening.

8. At what time did you return to the deck?

A. I took charge of the deck again at twelve o'clock. I had been on the deck during the time twice.

9. Who had charge of the deck during the watch from eight to twelve?

A. The captain.

10. For what purpose did you visit the deck during his watch?

102 A. To obey the calls of nature.

11. Were you well or sick?

A. I was perfectly well.

12. Describe the lights you saw set on the Van Vliet?

A. She was in such a position that only her starboard light was visible when she was standing to the southward and eastward.

13. How was she standing when you saw those in charge of her put out her light?

A. He was standing to the southward when I first saw his light. It was then just at dark.

14. What, if any, peculiarity was there about the lights of the schooner Van Vliet, distinguishing them from the lights of other sailing vessels?

A. There was no peculiarity about the lights themselves, but knowing the position of the vessel at dark, and keeping sight of her lights, we could keep her position throughout the night.

15. Was there any tack when you could not distinguish her lights?

A. At times, when she was on the starboard tack, the port light was visible, and when she was on the port tack the starboard light was visible all the time.

16. When did you arrive at New Haven?

A. On the morning of the 19th of April.

17. At what time in the morning?

A. At about nine o'clock.

18. Did you keep any record of the time of the happening of any of the occurrences you have related?

A. I did not—no written record.

19. Was there any change in the weather during the night?

A. None till daylight in the morning.

20. What was that change?

A. The weather came in thick at daylight.

21. At about what time, by your clock, would you fix upon as daylight, in reference to this change in the weather?

103 A. Between half past four and a quarter to five.

RUFUS E. HINE.

Sworn before me this 11th day of July, 1866.
Attest: ALFRED BLACKMAN,
U. S. Circuit Court Commissioner, District of Connecticut.

MINOR F. WRIGHT sworn.

By Mr. INGERSOLL:

Q. Where do you live?

A. In New Haven.

Q. Were you mate on the Van Vliet?

A. I was.

Q. How long have you been to sea?

A. About seven years.

Q. Where were you at the time of the collision?

A. It was my watch below.

Q. At what time did you go below?

A. At twelve o'clock.

Q. Now state if you came on deck, how it happened, and what you saw.

A. I was first awakened by the captain calling me. We all then made a rush for the rigging. Then we went to get the boat down. After that we went forward to look at the lights.

Q. What did you see?

A. I got up on the rail, on the starboard side, and saw our light burning brightly—green light.

Q. Did you look at the other lights?

A. I then went across the deck, got upon the rail, and looked at the other light. The jib was wrapped round the box, so that I had to take my hand and pull it to one side to see the light.

Q. Did you see it?

104 A. Yes, sir; I saw it burning. About that time I looked to the leeward, and saw the "City of Norwich" burning, with the "Electra" laying alongside of her. After that I went to the pumps. A short time after that I went and put the wheel up, and tried to keep her off. I looked at the compass to see whether she fell off or not. I noticed that she headed northward. Then I saw the captain lower the spanker down at that time.

Q. What did he lower the spanker for?

A. So that she could keep off. We continued pumping for I suppose some twenty minutes after that. At one time I left the pump and went forward. I looked around a moment, and then I came aft again. I think that the steamer Norwich had sunk at that time. We continued pumping there for some time. I left the pumps about five o'clock—daybreak; I stood along midship, just along by the mainmast. I saw both the lights of the steamer—the green as well as the red. She was heading about square and midships for us. In the course I should think of about three minutes she had come along by us, and went under our stern.

Q. What steamer was it?

A. It proved to be the "Elm City."

Q. What happened after that?

A. We then continued pumping for a short time, and the captain said finally, it was of no use, and then we got into the boat and left. That was between five and six o'clock.

Q. Was anything done with the sails?

A. Yes, sir; the captain slacked the main peak down at the time he slacked the spanker, when we put the wheel up. Then before we left her, he slacked the sail down and made fast the peak.

Q. Did he lower it clear down?

A. Yes, sir; all the sails were down when we left her—that is, all except her head sails. They were swung round to the leeward.

Q. State what you saw in coming out of the cabin?

A. I saw the "City of Norwich's" wheel. It was just by our stem.

Q. What do you mean by passing by your stem?

A. I mean to the windward. That is, to the starboard end.

105 Q. What watch had you that night on deck?

A. I had the port watch.

Q. Between what hours?

A. My watch that night was from eight to twelve.

Q. Did you or not see the lights up?

A. I do not recollect.

Q. Did you see them during your watch?

A. Yes, sir.

Q. How burning?

A. Brightly.

Q. As regards the weather during that night, at the time of the collision, and so on until you left in the "Electra." State how it was.

A. In my watch from eight until twelve the weather was clear. That is, it was a starlight night. When I came on deck after the collision the weather, until half-past five, was as easterly weather is.

Q. How is that?

A. It was cloudy overhead at that time, I think. After half past five, after we got into the boat, part of the way to the "Electra," it was thicker.

Q. Well, as to the wind in point of strength.

A. After I came on deck, I do not think there was over a two-knot-and-a-half-breeze. After the collision, I mean.

Q. After you came on deck, after the collision, did you or not see any lights on shore?

A. I saw the lights at Eaton's Neck and at Norwalk.

Q. Did you notice, when you came on deck, after the collision, the position of the bowsprit of the schooner?

A. I noticed that it hung there at the leeward. I did not notice it particularly.

Cross-examination by Mr. **Halsey**:

Q. Are you a brother of the captain?

A. Yes, sir.

Q. When you went to look at the light after the collision, were you requested by any one to go and look at it?

106 Yes, sir.

Q. By whom?

A. The captain.

Q. You say you went forward and looked at the light. Who went?

A. The captain and I.

Q. How long was this after you went on deck?

A. It could not have been ten minutes.

Q. You came right up on deck after the collision?

A. Yes, sir.

Q. If I understand you, you and the captain went forward together to look at the light.

A. Yes, sir.

Q. What did he say to you when he requested you to go forward?

A. He says, "Look here, see the lights—they are all right."

Q. You say you stepped upon the rail?

A. Yes, sir.

Q. Could you see the light from the deck without stepping upon the rail?

A. I could the weather light.

Q. I mean, could you see the light itself, or only the rays of the light? Did you see the blaze of the lamp without stepping upon the rail?

A. Yes, sir; I think I could without stepping upon the rail.

Q. Did you?

A. I did not notice that. I stepped upon the rail.

Q. How near to the fore-rigging was it that you stepped upon the rail?

A. Close to it; just aft of it.

Q. Could you see the light aft the fore-rigging?

A. Yes, sir.

Q. Could you see the blaze of the lamps from that place?

A. Yes, sir, by leaning forward.

Q. How high was the lamp above your head?

A. I do not know, sir; seven or eight ratlins.

Q. Above your head, wasn't it?

A. Yes, sir.

107 Q. And you were right close up to it?

A. Yes, sir.

Q. About how many feet above your head was the lamp?

A. I could not tell exactly, but I should think it was twelve or fifteen feet from the deck.

Q. Several feet above your head?

A. Yes, sir.

Q. Were you there when any of the rest of the crew came and got up and looked at the lights, or came forward to look at them?

A. They were with us at that time.

Q. Were they all with you?

A. I know they all were but the steward. I do not know whether he was there at that time or not.

Q. Did they all get upon the rail to squint at the light?

A. I did not notice.

Q. You say that the steamer's wheel was just by your stem when you came on deck. How was your vessel pointing towards the steamer?

A. We were heading north at the time.

Q. How was the steamer heading?

A. I do not know.

Q. How did the steamer lie with reference to the stem of your schooner? The wheel you say was just by the stem. Was the steamer going right by the bow of your schooner?

A. I should not think she was going square across.

(Two models were here handed the witness, with which he exhibited the positions of the vessels at the time.)

Q. Could you see distinctly forward coming up from the cabin aft?

A. Yes, sir.

Q. Did you come right up out of the cabin after the crash?

A. Yes, sir; at the crash I came right up.

By the COURT: Did you get on deck before they struck?

A. No, sir.

Q. Where were you when they struck?

A. I was asleep; that is, the first blow.

108 COUNSEL. What called you to the deck?

A. The captain spoke to me.

Q. Then you were not roused by the blow?

A. I should say that he called me about as she struck?

Q. What did he say to you?

A. He sung out something that woke me up; I do not recollect what it was.

Q. Who was below with you?

A. The steward.

Q. Peter?

A. Yes, sir.

Q. Did you see the steamer "Electra" soon after you came on deck?

A. I did not notice her until I saw the City of Norwich on fire.

Q. But did the Electra come close by you or near you?

A. I did not notice her.

Q. How far was she from you when you first noticed her?

A. I should say she was half a mile.

Q. Was she between you and the Norwich?

A. No, sir.

Q. Where lying from you with reference to the Norwich?

A. I should think she was at the southward; though I cannot say positively, as I did not take any bearings.

Q. Southward of what?

A. The City of Norwich.

Q. You cannot tell whether the Norwich was between you and the Electra, or the Electra between you and the Norwich?

A. The City of Norwich was not between us and the Electra.

Q. Was the Electra between you and the City of Norwich, or where did she lie?

A. No; she was not between us. She was to the eastward. I should think she was rather ahead of the City of Norwich—that is, off either southward or northward. She was not headed so as to shut the steamer from our view.

109 Q. You saw the steamer Norwich burning, and you think the Electra was to the southward of the Norwich when you first saw her?

A. I do not know about that.

Q. Did the burning of the Norwich make a bright light?

A. No, sir; that is, nothing very extra bright.

Q. Her upper works were all on fire?

A. Yes, sir; before she sunk she was all on fire, from stem to stern, pretty much.

Q. Didn't it make a pretty bright light?

A. Well, no, sir; I do not know as it did make a very bright light.

Q. It didn't burn quite so bright as your lights?

A. I think she sunk too quick for it.

Q. You could not say that the burning of the Norwich made a very bright light?

A. No, sir; I do not think the flame burst out enough around the hull before she sunk.

Q. Were her flames visible?

A. Yes, sir.

Q. For how long?

A. I should think they were visible five or ten minutes.

Q. Do you think that is as long as any flames are visible?

A. Yes, sir.

Q. At what time did she sink?

A. I should say it was about twenty minutes or so after the collision.

Q. If I understand you, you saw the Elm City's side lights some three minutes before she came up to you?

A. I said some three or four; I cannot tell exactly.

Q. And she hauled her course and went to the southward of you?

A. Yes, sir.

Q. How near did she come to you?

A. I should judge she was not over her length off.

Deposition of Rufus E. Hine read.

110 Capt. **Wm. A. Wright** re-called.

By the **Court**:

Q. Were these lanterns that were set in the light-boxes fastened at all?

A. Yes, sir.

Q. Lashed?

A. Yes, sir; they were fastened to the light-boxes, and also lashed from the ring to the shroud as a precaution.

Q. How were they fastened to the box?

A. There were two staples upon the light-box that came out, two staples upon the back of the lantern, and a bolt passing right through those, so that the lights were held firmly to the box.

By Mr. **Halsey**:

Q. In regard to the covering-cap of the bowsprit, was that broken?

Witness. Do you mean where the bowsprit passes the knight-heads?

Counsel. Yes, sir.

Witness. It was split to pieces, and carried to the leeward of the knight-heads.

Q. That is what secures the bowsprit and passes over it?

A. Yes, sir; it passes over it and secures the knight-heads more securely. The bowsprit is secured outside of that by a gammoning, that fastens down the bolts through the stem outside of the knight-heads.

Wm. R. Merrihugh sworn.

By Mr. **Ingersoll**:

Q. Where were you on the 17th of April last?

A. On the Sound.

Q. What doing?

111 A. Was master of the schooner "Chieftain."

Q. During what part of the night of the 17th were you on deck?

A. From eight to twelve.

Q. When did you come on deck again?

A. About four o'clock. I was called before four o'clock. I came on to stand my watch about four o'clock. The mate called me on deck to see the fire.

Q. About what time was that?

A. It wanted fifteen minutes to four.

Q. When you came on deck at that time what was the weather?

A. The weather was kind of smoky, easterly weather, directly overhead. You could just discern the stars; off at a distance, it was hazy.

Q. How was the wind in point of strength?

A. It was, I should judge, from two and a half to three knots.

Q. Did you see any lights on shore at that time?

A. Saw the light on Captain's Island, and Norwalk.

Q. Had you seen the schooner S. Van Vliet before that time?

A. I saw her in the forepart of the night, between eight and twelve.

Q. How did you know it was her?

A. I saw her before dark; I saw her when she set her lights.

Q. Had you known the Van Vliet before that?

A. Yes, sir; I had served on her as first mate.

Q. How far off was she when you observed her lights?

A. I judge we were from two and a half to three miles to the westward of her.

Q. Did you see her lights plainly?

A. Yes, sir; during the time from eight to twelve; that is, I saw one light.

Q. You, of course, saw her port light when she was on the starboard tack, and *vice versa*?

A. Yes, sir.

112 Q. How did the brightness of those lights compare with ordinary lights that you discovered?

A. They were shining as brightly as all lights of that description do.

Q. State whether there are any better lights than those?

A. Not that I know of.

Cross-examination by Mr. **Halsey**:

Q. After dark, you could not see the vessel at all, I suppose?

A. No, sir; not to discern the hull.

Q. Could you have seen the vessel at all at the distance you speak of, or did you simply discover her lights?

A. I discovered her lights, but could not see the vessel.

By the **Court**: I understand that you identified her by the fact that you saw the lights, and kept watch of her?

A. Yes, sir.

Q. What tack were you on when you came on deck that night, at four o'clock?

A. We were standing to the southward.

Q. Where did this light bear from you?

A. I did not note the bearings at that time, but I should judge she was east-by-south. At the time I saw the light we were on the north shore, standing to the southward.

Q. How many vessels' lights had you seen that night, beating to the eastward?

A. Two.

Q. You went below at twelve?

A. Yes, sir.

Q. Where was the Van Vliet, as you supposed, at that time?

A. I think she was to the southward.

Q. How far from you?

A. I should judge about from two and a half to three miles.

Q. On which tack?

A. I have gone port tack; I do not recollect distinctly; but I think on port tack.

Libellants rest.

113 *Testimony for the defendants.*

Henry L. Tracey sworn.

Examined by Mr. **Halsey**:

Q. Where do you reside?

A. In Norwich.

Q. What is your age?

A. Thirty-nine.

Q. What is your employment?

A. Boatman, pilot.

Q. How long have you followed the water?

A. Twenty-seven years.

Q. What part of the time on sailing vessels, and what part on steamers?

A. I have been about nine years steamboating.

Q. Upon what boat were you employed in the month of April last?

A. "The City of Norwich."

Q. In what capacity?

A. That of first pilot.

Q. At the time of the collision?

A. Yes, sir.

Q. Were you on board of the boat at the time of the collision?

A. I was.

Q. State between what hours was your watch on deck?

A. I was on watch about a quarter past two, by our New York time.

Q. Quarter past two in the morning?

A. Yes, sir.

Q. Whereabouts was your vessel at this time?

A. She was at Stratford light-ship.

114 Q. Was it your watch on deck from that time forward?

A. Yes, sir.

Q. Who was on deck with you in your watch?

A. Mr. William Carpenter was my wheelsman; and Mr. Crock the bow lookout.

Q. Was that a full complement for a watch?

A. Yes, sir; aside from the engineer.

Q. What was the state of the weather at from two to four o'cloc

A. At two o'clock it was starlight overhead. The weather gradually thickened up as it grew towards morning.

Q. How was it at the time of the collision?

A. What we call bad seeing. It was hazy weather—sort of a misty grey atmosphere.

Q. State where you were stationed on the steamer when you discovered the schooner?

A. I was stationed a little on the port side—propably two or three feet from the centre.

Q. In the pilot-house?

A. Yes, sir; near the forward rim of the wheel.

Q. What were you doing there?

A. I was looking out.

Q. How long had you been standing there?

A. Since I came on watch—about an hour and three-quarters.

Q. You had been in that position from the time you came on deck until the time I spoke of, when you discovered the schooner?

A. Yes, sir.

Q. Had you seen the lights of any vessels since you had been in that position?

A. Yes, sir.

Q. In what direction were they going?

A. There was one that we passed on the wind, and we passed two running before the wind, or coming up the sound nearly before the wind.

Q. Did you have any difficulty in discovering their lights?

A. No, sir; we did not see those before the wind until we got pretty well up.

115 Q. Will you state how this schooner bore from you when you discovered her?

A. She was on our port bow, as near as I can tell. I could take no bearings, for I had not much time—about three points, I should say.

Q. About three points on your port bow?

A. Yes, sir.

Q. What did you discover?

A. The sails were the first thing I saw of her.

Q. Did you see any light?

A. No, sir.

Q. From the position in which you discovered the schooner, would her starboard light have been opened to your observation?

A. Yes, sir.

Q. How far distant did you judge the schooner to be from you?

A. I should think between three hundred and four hundred feet—probably twice the vessel's length.

Q. How far at that time could you see a vessel's lights, which were vell trimmed and burning brightly—ordinary lights?

thA. On an average of a vessel's lanterns, we have seen them from a e and a half to two miles.

119 At what rate were you going?

I suppose we were then going about from ten to eleven miles an

A.

By Was there any steamer in company with or near you?

A. Yes, sir; the steamer (Electra?) was a short distance east of us.

Q. What steamer was that?

The steamer "Electra."

. Was she running in the same direction with you?

A. Yes, sir. The forepart of the night she had been nearly abreast of us; but she dropped back then.

Q. How was the wind?

A. I should think something like east-northeast.

Q. As to force—how many knot breeze was it?

116 A. I should think about a four knot breeze; but I could not tell exactly.

Q. On discovering the sail of this vessel, what did you do?

A. Spoke to the wheelsman, saying, "What is that forward? port your wheel;" and slowed the boat.

Q. Now tell us what you did?

A. I first rung the shut-off bell, then told him to port his wheel, and myself took hold of the wheel and hove one turn.

Q. What do you mean by a turn?

A. A turn of the wheel round—there are five turns to the barrel. Then I rung the bell pull to stop her.

Q. Had you observed the boat before that?

Yes, sir.

Q. If I understand it correctly, you spoke to the wheelsman and told him to port, then rung the shut-off bell, and afterwards took hold of the wheel with him.

A. Yes, sir.

Q. Then, what next?

A. Then I backed. I rung to back her, having the wheel hard over.

Q. Did you state how rapidly you gave these signals?

A. I think I rung them fully as fast as the engine could be handled.

Q. Did the vessels come together; and if so, where and how?

A. They came together.

Q. How?

A. The schooner came ahead on to us.

Q. About where did she strike you?

A. Very close to the pilot-house, about square on, I should think.

By the COURT: Hit you on the port side, of course?

A. Yes, sir.

Q. How much had the course of the steamer been changed prior to the striking of the schooner in your side, in that way?

117 A. She had not gone off very much. I should not think over a point and a half, when we came together.

Q. What was the course you were heading prior to putting the wheel to port in that way?

A. Running west-by-south quarter south, by our compass.

Q. That is your usual course, I suppose?

A. Yes, sir; our usual course from the light-ship.

Q. After the schooner came into you, what took place?

A. The first thing that I did after the collision was to sing out to the bow look-out; was to run aft and hail the schooner to see if she was sinking. He came back and reported that she was. I then backed to where I supposed he was; stepped outside, but didn't see him.

Q. Where was the schooner?

A. Somewhat astern. We drew past her pretty rapidly.

Q. Although you struck your bell to slow, stop, and back, you

tion was ahead at the time the collision took place?

A. Yes, sir.

Q. You say you did not see the schooner after she passed by, alt

you looked out to see her?

A. No, sir.

Q. Then, what did you do? Did you stop?

A. Yes, sir. He came forward, and said they were sinking.

Q. What did you do after that?

A. I made up my mind that we were in the same fix at that time, and said to the wheelsman, "They have had time to get their boat down if they are sinking, and we had better look out for ourselves." We then reversed the wheel, and I rung the bell to go ahead with the boat—to head her into the bay.

Q. Towards the Long Island shore?

A. Yes, sir.

Q. How far were you from Long Island shore?

A. I should think it was two miles and a half, or something near that, from the shore. I suppose Lloyd's Neck was the nearest land we had to us.

118 Q. What did you mean by the expression, "We were in the same fix?"

A. That we were sinking from the appearance of things.

Q. Was the water coming in rapidly?

A. I supposed it to be—I knew she had been hit very hard.

Q. How long did you go ahead on that course?

A. But a very short time—I could not say how long exactly.

Q. What was the trouble?

A. I saw people were rather scarce round there where we were, and so stepped outside, when I heard them clearing away the boats to work. I then stepped down to the engine-room, and asked Mr. Hibbard, I think it was, if the boat was or was not working. He said she was, and I told him to stop her, as they were getting the boats overboard, and we would swamp them by working ahead. She was stopped.

Q. What next?

A. I went back into the pilot-house, and the wheelsman staid there until I saw a light from the engine-room. Then I went down there, saw that she was on fire in the engine-room, and that everybody had left around there. I came back into the pilot-house, and told the wheelsmen that the boat was on fire midship, and that we would have to take care of ourselves.

Q. How soon after the collision was it before you discovered her to be on fire?

A. I could not tell exactly, but I should say it was from fifteen to twenty minutes—somewhere in that neighborhood.

Q. How long before she sunk?

A. That I could not tell—I should think some three-quarters of an hour.

Q. After the collision?

A. Yes, sir.

Q. Before she went out of sight?

A. I do not know but what it was an hour altogether.

Q. State whether you could see the vessel's lights at that time further n you could made out a vessel by her sails.

A. Certainly.

Q. Will you state what you were doing at this time? Whether you were in the pilot-house attending to your business?

It is my business, while on watch, to look out.

the Court: Who was the man stationed forward?

Mr. Crocker.

Where did he stand?

A. He stood about eight or ten feet from the flag-staff, or stem of the boat.

Q. Your pilot-house, I suppose, is on the upper works, looking into the forward deck.

A. We have only one deck. We call it a permanent deck. We have no hurricane deck.

Q. How far is your pilot-house above the promenade deck?

A. I do not know, exactly. It is probably twelve or fifteen inches.

Q. You had no word passed from the look-out until you had discovered the vessel yourself?

A. No, sir.

Q. Your look-out did not discover it?

A. I saw him jump round about the time I saw the vessel.

Q. Did he have any other business, except to look out?

A. No, sir.

Cross-examination by Mr. HUNTLEY:

Q. The deck forward of the pilot-house, where Crocker was stationed, was on a level with the house, except that you were raised some twelve or fifteen inches above the deck.

A. Yes, sir; but the deck has some sheer forward. He was probably within a foot as high as I am in the pilot-house. I do not know exactly what its height is from that deck.

Q. This deck extends clear aft, covering the whole steamer?

A. Yes, sir.

Q. When did you last see Mr. Crocker before you saw him stirring about?

A. I could see him all the time steady from where I stood.

Q. When did you last see him, was the question?

A. Probably a half minute previous. The fact is, that from
120 where I was, he was right under your eyes all the time, if you
looked forward; which you must do if you look anywhere.

Q. Where was he when you last saw him, prior to this stirring about?

A. He stood about eight or ten feet abaft of the flag-staff.

Q. Was he not by the side, a little back of the pilot-house?

A. No, sir.

Q. Are you positive of that?

A. Certainly.

Q. Did you see Mr. Halsey and state to him the particulars of this collision?

A. I saw Mr. Hasley—I stated to him some of the particulars.

Q. Did you state to him how far you were from the schooner at the time you first saw him?

A. I do not recollect whether I did or not.

Q. How long before discovering the schooner did you see the last vessel's lights of which you have spoken?

A. I could not tell the exact time—probably ten or fifteen minutes before.

Q. Which way was that vessel going?

A. To the westward.

Q. On which side of it?

A. On the starboard side.

Q. How far distant?

A. Something like a quarter of a mile, I should think.

Q. You saw her light distinctly?

A. Yes, sir.

Q. What light was it?

A. A red light.

Q. Did you observe whether your signal to slow the boat was answered at once?

A. Yes, sir, it was.

Q. How many points of the compass can you change the course of your boat on going a distance of 400 feet, at the rate of ten miles an hour?

A. I could not say. I never timed her to experiment. If the wheel were hard over she would swing considerably faster.

121 Q. Would she not turn almost at right angles from her first course?

A. Oh, no, sir; you could not get that wheel hard over without slowing the boat.

Q. Where was your wheel at the time of the collision.

A. I should think it was turned half port—probably more.

Q. Will you be kind enough to state what was the first thing you saw when you discovered the schooner?

A. The first thing I saw was the sails, just below her gaff. I got sight of her canvass.

Q. What sail?

A. Her mainsail and foresail together, I guess. In fact, I saw pretty much all when I saw anything. The light shining on her canvass was the first thing that attracted my notice.

Q. Did you observe she was on the wind at that time?

A. Yes, sir; I could see the position of the vessel as soon as I made her at all.

Q. Did you see any one on board of her?

A. No, sir.

Q. Was there anything particular that aided you in seeing the sails?

A. I think there must have been some reflection, or something to show that canvass in the way it did. It was the first thing that attracted my attention.

Q. Why do you think there must have been something?

A. Because it looked so, is the reason I think so. There seemed to be a kind of light shed there; not a dark object, which we sometimes catch first in the horizon.

Q. Was it very light?

A. No, sir; it was a kind of blue dim shade.

Q. What was the color of it?

A. Light.

Q. Do you want us to infer that that was the reflection from your light?

A. You can infer what you please. I supposed it was the reflection from our lights.

Q. Did you ever observe what kind of a shadow your lights cast?

122 A. I do not know as I ever did.

Q. Did you think the reflection of your red light would be a light shadow?

A. I should not think it would.

Q. Then you do not think your red light cast this reflection on the vessel's sails?

A. I could not say whether it did or not; I never experimented.

Q. It was hardly such a reflection as you would expect from a red light?

A. I do not know as I ever saw much reflection from a red light.

Q. Did you notice the schooner's flying-jib, and jib topsail?

A. No, sir.

Q. You did not see them at all?

A. I saw them before the schooner came into us; but I did not notice them in the first place. The first thing I saw was the mainsail and foresail about the middle of the vessel.

Q. Where were you standing at the moment of the collision? On the starboard or port side of the wheel-house?

A. On the port side.

Q. How near to the side?

A. Probably two or three feet. I stepped back a little as she came into us.

Q. How far is the wheel-house from the stem?

A. I do not know the exact distance; but I should think in the neighborhood of fifty feet.

Q. At the moment of the collision did you observe the schooner's bowsprit?

A. I noticed the whole of it.

Q. What part of it did you see?

A. I saw the bowsprit, jibboom, jib, and all raised right up.

Q. Was that before or after the hulls of the two vessels came together?

A. That was before; but they were closely connected. There was not much intermission. There was no stop that I saw, from the time she came in until she hit the hull.

123 Q. At the time of first discovering the schooner, or just before discovering her, were you in conversation with the wheelsman?

A. I had been a minute or two before that.

Q. How long had you been conversing with him?

A. I do not recollect particularly about that. It was a very few moments. I know I spoke to him about the boat making pretty good time.

Q. Did you not think that instead of being three or four hundred feet off when you first saw the schooner, you were three or four times the length of your steamer off?

A. No, sir.

Q. How long was the steamer?

A. She was about two hundred feet.

Q. Have you not stated that you were three or four times the length of the steamer off?

A. I guess not.

Q. If you had been three or four times the length of your steamer off, could you have cleared the schooner?

A. I rather think we might, if we could have got the wheel immediately over.

Q. Supposing the schooner going three or four knots, and three or four points off your port bow, if you had kept your course straight on with her, bearing in that way from you, at the rate of ten or eleven miles an hour, would you have hit her?

A. I think she would have hit us, if we had not hit her.

Q. You think you would have to come together?

A. Yes, sir.

Q. Where do you think you would strike under such circumstances, she going from three to four miles an hour, and you going ten or eleven miles an hour?

A. Somewhere forward of the beam. I cannot define any particular distance, and no other man can.

Q. Did you inquire of your lookout why he did not report this schooner to you?

A. No, sir.

Q. You did not say anything to him about it?

124 A. No, sir.

Q. How far did the outer edge of your guard project beyond the boat at the point where you think the schooner struck you?

A. I do not know how far it does project there.

Q. Give us the distance as near as you can.

A. I could not give you much of an estimate of it—at a rough guess, I should think three or four feet.

Q. What was it that the bowsprit struck against that threw it up?

A. I do not think it struck against anything. I think from the way it looked to me, as if it shot over our guard and slid up.

Q. Did it seem to break away?

A. Yes, sir; it had to break away.

Q. Where it went over your guards, was there anything else to interfere with it?

A. The bowsprit swept away the joiner work without any trouble.

Q. What was there to carry away the bowsprit?

A. Our guards.

Q. How high were your guards above the water?

A. I do not know; I should think some eight or nine feet.

Q. Did you have a good load on?

A. Yes, sir.

Q. You were loaded pretty deep that night, were you not?

A. We had a fair load on.

Q. Do you mean to say that your guards were eight or nine feet high above the water, abreast of the pilot-house?

A. Eight feet, I should think. There is a gentleman here who can give you the exact dimensions. I never measured them, and I do not know much about them therefore.

Q. At that very instant did you observe her flying-jibboom?

A. I do not know that I did.

Q. Her bowsprit, you did?

A. I noticed her head gear. What I saw of it, all seemed to go up together.

Q. Did you say she struck you a little forward or a little aft of the pilot-house?

125 A. I should think it was little forward of the pilot-house.

Q. But you then have seen the whole bowsprit and jibboom right in front of you?

A. I saw a whole mass of stuff there; I do not know as I could define it.

Q. Wouldn't her jibboom have reached right across your deck, running right under it?

A. I suppose it was used up as soon as it got under there.

Q. What part of your boat hit her jibboom?

A. The hurricane deck.

Q. But your pilot-house is forward of the hurricane deck?

A. There is no hurricane deck proper on this vessel.

Q. Whatever deck it is, it is forward of that, is it not?

A. It is all on one deck.

Q. Your pilot-house was on the deck flush, or nearly so—raised a little between your pilot-house and the stem of the boat; what obstacle was there in the way?

A. Nothing but the capstan.

Q. Did you see the jibboom of this schooner anywhere between your pilot-house and stem of the boat?

A. I saw it when it came into us altogether—the whole head gear.

Q. At what time did you leave Norwich?

A. At one o'clock.

Q. And New London?

A. At half-past nine in the evening.

Q. Is that your regular hour for leaving New London?

A. We did not have any particular hour for leaving.

Q. You were a little behind time that night?

A. No, sir; we started about our usual time. We were a little ahead of our usual time, if anything. We would generally leave when we got a load in.

By Mr. Halsey:

Q. Did you see any light on the schooner at any time that morning?

A. No, sir; I did not see the schooner after the collision, until daylight.

126 Q. What did you say about Mr. Crocker—about his position at the stem of the boat; did you state whether you saw him there or not?

A. Yes, sir; I said I saw him standing there some eight or ten feet abaft of the stem.

Q. Saw him at his position?

A. Yes, sir.

George C. Crocker sworn.

Examined by Mr. Halsey:

Q. Where do you reside?

A. The city of Norwich.

Q. What is your age?

A. Nineteen.

Q. How long have you followed the water?

A. Six years.

Q. What was your employment on the City of Norwich in April last, at the time of this collision?

A. Lookout.

Q. How long had you been thus employed on the "Norwich?"

A. From the sixth day of July, 1865.

Q. What was your duty as lookout?

(No response.)

Q. When did you come on to your watch?

A. In New London, at nine o'clock forty-five minutes.

Q. State whether you had any other duty to peform on the boat, other than the bow lookout?

A. Nothing at all.

Q. What was your wages?

A. Thirty dollars a month and all I could eat.

Q. In other words, you had $30 a month and your board?

A. Yes, sir.

Q. Where were you stationed?

A. On the upper deck.

Q. Was that your regular station on the boat?

A. It was.

127 Q. Where were you stationed just prior to the collision, when you first saw the schooner?

A. Forward of the port cat-head, within eight feet of the flag-staff.

Q. Was there anything on that deck between you and the pilot-house and if so, what?

A. Nothing but a capstan.

Q. The deck then was all clear?

A. Yes, sir.

Q. State if you discovered the schooner; how and what you discovered.

A. On the forward deck looking out, I discovered a vessel on the port bow, about three points off. I turned to make my discovery known to the pilot, when I heard him ring the shut-off bell, and slow the boat. Seeing that he knew there was a vessel there, I did not say anything.

Q. How did you make this vessel out?

A. By her sails.

Q. Did you see any light upon her?

A. No light at all.

Q. How far did you judge she was from you when you first made her out?

A. Twice our length—three or four hundred feet.

Q. Could you tell how she was heading?

A. She was heading to the northward; I could not say the exact point.

Q. Did she present a broad side to you, or more of a wedge-shape?

A. Quarter off of port bow; the starboard side was all clear; her booms were over to port.

Q. State whether you had an opportunity to see a light in her starboard rigging, if she had had a bright light there.

A. I could have seen it if she had had a bright light there.

Q. Had you seen the lights of other vessels anywhere near this time?

A. Yes, sir; three or four vessels along before that; about ten or fifteen minutes before passed one to the northern and one to the southern.

128 Q. Did you have any difficulty in seeing their lights?

A. None at all, until we got up far enough forward, and passed a vessel going with us.

Q. After you saw this schooner, and heard the bell strike, what did you do?

A. I went across on the opposite side of the deck—the starboard side.

Q. Where did you stand?

A. On the starboard side, opposite the capstan, or between the capstan and the pilot-house; there was a space between.

Q. Where were you standing when the vessels came together?

A. On the starboard side of the deck.

Q. How did the schooner come into you?

A. It was about right angles.

Q. Will you describe as near as you can where she struck you?

A. She struck us about abreast of the pilot-house, I should judge, by the little time we had to see her coming.

Q. Did she strike then aft of where you stood?

A. Very little.

Q. Did you see anything of the effect of the collision?

A. The flying jibboom went into the joiner work above the guard, and smashed that in; the bow of the schooner went under the guard, and stove a hole in her side; as we went ahead, slewed her round parallel with us, and she drifted astern.

Q. Immediately after the collision, what did you do?

A. The pilot sung out to me, and said, "George, hail that schooner and ask the captain if he is hurt much?"

Q. Did you do so?

A. I did; I got my answer: "Yes, come back, we are sinking."

Q. What did you do?

A. Came forward and reported to the pilot what he said.

Q. At the time you went aft to hail the schooner, where was she lying?

129 A. Astern of us; little aport, about to the outside of our work; she was very near our length off.

Q. How was she heading, towards you or from you?

A. I believe, as near as I could judge, very nearly parallel with us.

Q. And heading towards you?

A. Yes, sir.

Q. When you went and hailed the schooner, did you discover any light in her?

A. I saw a light coming from aft; it looked to me as if it was going forward.

Q. What kind of a light was it?

A. A white light.

Q. It was a light in the hands of somebody?

A. It looked to be.

Q. Was that a light on deck?

A. Yes, sir.

Q. Being brought forward?

A. Yes, sir.

Q. What did you do next?

A. I went back and reported to the pilot.

Q. What next?

A. Then I went and busied myself about what I could find to do.

Q. What did you find to do?

A. Not much; other than to go into the room and hunt up some life-preservers.

Q. Did you go to securing life-preservers for the passengers?

A. Yes, sir.

Q. How soon before the boat was on fire?

A. I could not tell how long; it was after she was struck, but not very long; we got one boat overboard; that was all.

Q. Do you know how many persons were drowned?

A. Eleven.

Q. Were they driven over hurriedly by the fire?

A. Yes, sir; they had one boat overboard and two pointed, when the fire came on them so quick that they had to leave them.

130 Q. Did you know whether the boat was rapidly filling with water after the collision?

A. I suppose she was; I was not down there to see; there was a large hole there.

Q. Did any steamboat come near you?

A. The "Electra" was approaching up to us.

Q. How were you rescued?

A. I jumped overboard and swam around about until picked up by a boat from the "Electra."

Q. The "Electra" stopped near by and sent boats out?

A. Yes, sir.

Q. Will you state what you were doing there on the look-out; whether you were looking out all the time?

A. I was; I was there to keep a look-out, and I did so; I had plenty of time during the day to sleep.

Q. If the schooner had had a good bright light burning, to be seen a mile or more, would there have been any difficulty in discovering her?

A. None in the least.

Cross-examination by Mr. HUNTLEY:

(The witness was requested to take two models of vessels, which were furnished him, and place them in the same relative position to each other as was the schooner and steamer when he first saw them. Witness did as requested.)

Q. Then you had no trouble in seeing the whole length of the port side of the schooner?

A. No, sir; I could see on the starboard clean aft.

Q. Could you see her fore-rigging?

A. Yes, sir.

Q. Her port fore-rigging?

A. No, sir; I might have seen it, but I did not look at it to see it.

Q. How far distant was the schooner when you first saw her?

A. From 300 to 400 feet.

Q. Then your stem about that time was past her bow?

A. Very little.

131 Q. Are you pretty accurate in judging of distances?

A. I do not profess to be anything great.

Q. But you are pretty good at it?

A. No; I cannot tell very much on the water about distances.

Q. How sure are you as to this 300 or 400 feet?

A. I judge from the looks of her.

Q. She must have been at least twice your length?

A. Yes, sir; about that.

Q. Where did you spend your day on the 17th of April?

A. In my bunk.

Q. Where?

A. On board of the "City of Norwich."

Q. At what port?

A. In the port of Norwich.

Q. At what time did you turn in?

A. When we got into Norwich—after I got my breakfast. I forget what time it was; the captain knows.

Q. About what time was it?

A. About three or four o'clock in the morning.

Q. When did you turn out?

A. When I left the dock.

Q. At what hour?

A. Between one and two o'clock in the afternoon

Q. Were you in your bunk all that time?

A. Yes, sir; with the exception of about half an hour before the boat started.

Q. What were you doing the night before?

A. I was on the look-out.

Q. All night?

A. Yes, sir; from the time we left New York until we got to Norwich.

Q. Did you stand the look-out during the entire passage?

A. Yes, sir.

Q. Both ways?

A. Yes, sir.

Q. Every night?

A. Yes, sir.

132 Q. You were never known to sleep on your watch?

A. I did not know it myself.

Q. I did not ask you if you knew it yourself; I asked you regarding the fact.

A. No, sir; I slept in the daytime. I have from ten to twelve hours every day in which to sleep.

Q. You say the schooner struck you near the pilot-house?

A. Yes, sir; about fifty feet from the stem.

Q. Was there any freight on deck near the pilot-house?

A. Underneath the pilot-house there was.

Q. What was it?

A. Boot and shoe cases, machinery, and such stuff.

Q. What happened to them?

A. I do not know. I never went down there.

Q. Did you see any of them overboard?

A. No, sir; I saw a plenty of floating boxes under the upper deck that were bursted.

Q. That was after the fire?

A. Yes, sir.

Q. You said something about this schooner getting under her guards and staving a hole in her. What do you know about that?

A. I know it is there.

Q. How do you know?

A. I saw it.

Q. When last?

A. Last Sunday.

Q. I want to know if you were aware at that time that she made a hole under the guard?

A. I know she struck there; and, of course, she must made a hole.

Q. What part of the schooner struck there?

A. I suppose the bow of it did.

Q. Why do you suppose the bow did?

A. Because nothing else but her bow was there.

Q. You do not know, but only suppose.

A. That is all anybody knows. I did not go there to look at it.

133 Q. Did you feel any shock when the collision took place?

A. I did.

Q. Was your flag-staff knocked down?

A. No, sir.

Q. Are you positive of that?

A. Yes, sir.

Q. Did you observe the exact point of your stem after the collision?

A. No, sir; I did not go forward to see that.

Q. You have seen this steamboat since.

A. Yes, sir.

Q. Did you notice anything about this stem?

A. Nothing but her stem there, and that is below the guard; below the main deck.

Q. Did you notice whether that was injured or not?

A. I did not look at that. I know I went over the deck, and there laid the anchor, and everything, just as they were left.

Q. After you had passed by this schooner, if there had been any light on her port side, would you have seen it?

A. Yes, sir.

Q. Then you are ready to swear there was no light on her port side?

A. I did not see any.

Q. Do you swear there was no light there on her port side?

A. I do.

Q. And you swear positively that there was none on her starboard side?

A. I did not say that. I could not see the starboard side, for her sails covered that. I mean on the windward side.

Q. Do you swear there was no light on her starboard side?

A. I do.

Re-direct by Mr. **Halsey**:

Q. When you looked aft at the schooner to hail her, and she was heading toward you, did you see any lights in the rigging—anything but this white light on deck?

A. No, sir; none in the rigging. That white light was all I saw.

134 **William D. Carpenter** sworn.

By Mr. **Halsey**:

Q. Where do you live?.

A. In Westerly, R. I.

Q. How long have you followed the water?

A. Thirteen years.

Q. Were you employed on the steamer "City of Norwich," in April last.

A. I was.

Q. In what capacity?

A. As a wheelsman.

Q. How long had you been employed there?

A. I had been there up to that time three weeks.

Q. How long had you been employed on steamers?

A. About seven months.

Q. State if you were at the wheel from two o'clock, at the time of the collision with the schooner?

A. I was.

Q. Who, if any one, was in the wheel-house with you?

A. Captain Tracy.

Q. Who was the lookout?

A. George Crocker.

Q. On which side of the wheel did you stand?

A. On the starboard side—forward run.

Q. Where was Crocker stationed?

A. Forward.

Q. What first attracted your attention to this schooner?

A. Captain Tracy.

Q. What did he say?

A. He said, "What is that? Port your wheel!" That is what he first said. It was done pretty sharp, and I turned the wheel pretty lively.

Q. What did Tracy then do?

A. He then rung the bell to shut off, or slow, which is all the same thing, I suppose.

Q. What other signals did he give?

135 A. He then took hold of the wheel and turned it a quarter of a way round with me; then rung the bell to stop; then rung the bell to back.

Q. Did you look and see the schooner?

A. I did. As soon as my attention was called that way, I looked through the port window and saw her—the port window being open.

Q. Did you make her out?

A. I did; I made out a schooner.

Q. How did she bear?

A. Somewheres from three to four points on our port bow, heading right towards the pilot-house—towards me.

Q. What distance did you judge it to be?

A. I should judge it to have been about one and a half, nearly twice the length of the steamer, as near as I could count the length when I first saw her.

Q. Did the schooner strike you, and if so, where?

A. The schooner struck us right abreast of the pilot-house.

Q. Now describe the result?

A. Well, she struck us right square on, nearly, and the effect was she stove a hole into the steamer and she sank.

Q. What became of her jibboom and bowsprit?

A. That was broken off. I heard the flying jibboom break, but I did not see the bowsprit, because I was on the starboard side.

Q. Was there any disturbance of the stem of the steamboat?

A. None at all.

Q. When you looked out of the pilot-house, and saw the schooner, state whether you saw any light upon her?

A. I did not see any light whatever. The heads of her fore and main-sail looked as if some light was reflecting upon them.

Q. What was the weather at this time?

A. It was very dark and hazy.

Q. There was what you call a low mist at that time?

A. Yes, sir; in seamen's language it was "foggy lumpy." Low clouds would sometimes seem to shoot down pretty close to the water and then it would light up again.

Q. Did it become foggy afterwards in the morning?

136 A. Yes, sir; very soon after the collision.

Q. Do you know at what rate of speed the steamer was going?

A. I should judge about twelve knots.

Q. Do you know where Mr. Crocker, the bow lookout, at the time of this collision was?

A. Yes, sir; I saw him forward of the capstan, where he usually stands, near the port side.

Q. After the collision, what became of the schooner?

A. She dropped astern. I do not know where she went to. I never saw her until after daylight again.

Q. Were you going ahead at the time of the collision?

A. Yes, sir; working ahead some. The wheel was still—I think backing, if it was working any way.

Q. After the collision, and the schooner had gone astern, what did you try to do with the boat?

A. Captain Tracy then rung the bell to go ahead, and gave me a course to steer us out. I very soon got her on her course due south.

Q. How long did you run on that course?

A. A short time; I could not say how long.

Q. What prevented your going on?

A. Captain Tracy had stopped the engine for some reason or other. He left the pilot-house and went aft, saying, as he did so, that he would go aft the engine, and see if she was working ahead.

Q. Do you remember whether you tried to back immediately after stopping her?

A. We did.

Q. Did you back?

A. We did.

Q. How were you compelled to leave the pilot-house?

A. By fire. Captain Tracy went out, and very soon came back and said, "The boat is on fire, and sinking. We must take care of ourselves the best we can."

Q. Can you tell how long it was after the collision that the boat was on fire?

137 A. I should think it was perhaps ten or fifteen minutes, to the best of my judgment.

Q. You say you did not see the schooner again until the next morning?

A. No, sir; not until after daylight.

Q. What were you on when you saw her the next morning?

A. The "Electra."

Q. Could you see forward of the pilot-house the stem and flag-staff?

A. Yes, sir.

Q. Were they broken or not?

A. No, sir; everything was all right forward.

Cross-examination by Mr. HUNTLEY:

Q. You have stated that the fog was lumpy?

A. Yes, sir.

Q. How late did you discover that before the collision?

A. A few minutes before that I know I thought of it.

Q. You say it was very dark; that once in a while very heavy dark clouds would drop low down, making it very dark, and then it would light up again?

A. Yes, sir.

Q. Where did you see them?

A. Right ahead.

Q. Close to you?

A. Yes, sir; seemed to be.

Q. How long remain?

A. They would frequently change their position and looks.

Q. Were they dense—thick?

A. They seemed to be pretty dense.

Q. Did you slacken your speed any when you saw them?

A. I could see the lights from the shore all the way along. I had seen Huntington light when we passed it. I did not look for it after we passed it ahead.

Q. When you first saw this schooner, you think she was from one and a half to two of your lengths from you?

A. Yes, sir.

138 Q. That would be 200 or 300 feet, wouldn't it?

A. Yes, sir.

Q. Will you be kind enough to place these two models as you understand the position to have been?

A. The schooner was on the wind at the time. That I knew by the way she was heading.

Q. How fast do you think you were going through the water when she struck you?

A. I think when the schooner struck we were going through the water about four or five knots.

Q. You killed more than half your headway?

A. Yes, sir.

Q. Did you immediately commence to sheer your boat to the northward?

A. I did just as soon as the schooner was made out.

Q. What did you do to sheer her to the northward?

A. Put the wheel aport.

Q. Rapidly?

A. Yes, sir; as fast as I could turn it.

Q. And you kept turning it?

A. I kept turning it until the schooner struck into us. Then I let go of it, and let it run midships.

(The witness here described, with the use of models, the positions of the two vessels.)

Q. Then the schooner struck you just about where she appeared to be looking for when you first saw her?

A. I should judge a little aft of where I judged her to be pointing.

Q. About ten feet?

A. Yes, sir; probably more than that.

Q. And you were sheering to the northward all the time?

A. Yes, sir.

Q. And going west at from twelve to five or six knots?

A. Yes, sir.

Q. Were there some men on board of your boat in the forecastle?

A. There was.

Q. How many?

139 A. I could not tell.

Q. How did they go into the forecastle?

A. Through a hatchway situated close to her bow.

Q. Was the hatchway leading into the forecastle on the deck below?

A. Yes, sir.

Q. How long do you say the steamer floated after the collision?

A. I should think, perhaps, it was three-quarters of an hour before I saw her smoke stack go under.

Q. Will you explain why these men did not come out of the forecastle in that three-quarters of an hour?

A. No, sir. I do not know anything about that.

Q. Was there any freight on any forward part of your main deck, near this forecastle passage way?

A. There was freight within fifteen feet of where they entered the forecastle.

Q. Was there anything to prevent their getting out of the forecastle, if your bow had remained as it was before the injury?

A. Perhaps attempting to come out in the excitement of the moment they would not know which way to run.

Q. But if your deck over that had been carried away and fallen in, then they could not have gotten out?

A. No, sir. At least they would not have had as good a sight at getting out.

Q. There were several, were there not?

A. Yes, sir; as many as five or six, and I think more than that, the way I saw them working around there.

Q. You think, then, there must have been as many as nine or ten?

A. Yes, sir.

Q. You do not know that more than one got out?

A. Yes, sir; I saw some overboard when I went aft. Some that I knew to be deck hands, because they had their clothes on them.

Q. Do you know where they came from?

A. No, sir.

140 Q. Did you pass along so as to see the port side of this schooner?

A. By the way she was coming into us I think I could have seen either of her lights, if they had been there, before she got out of range.

Q. Then you have as much reason for saying she had no port light, as you have for saying that she had no starboard lights?

A. Yes, sir. If she had had a port light I would have been more apt to see it, because it is a brighter light.

Q. May there not have been a dim light?

A. If there had been a spark of light I could have seen it.

Q. You mean to say that you did not see any light?

A. I mean to say that there was no light there. If there had been, my eyes were good enough to have seen it.

Q. Did you notice the schooner after the collision—what her course was?

A. No, sir; I never saw her after she swung round alongside and we went ahead.

Q. At daylight you saw her?

A. Yes, sir.

Q. Did you notice your look-out?

A. I did, not a half minute before.

Q. While you were engaged at throwing your wheel aport, where was your attention?

A. I being on the starboard side of the wheel, of course I heave in this way and look out that way; I could cast my eye there at any instant, and see what there was.

Q. You saw the schooner all the time?

A. No, sir; not all the time I was heaving the wheel.

Q. When did you lose sight of her?

A. As soon as she struck us, because at that time I looked on the compass.

Q. How were you heading when she struck you?

A. I think we were heading west-by-north—perhaps a little northward of that. This was after the collision.

Q. Did you see the schooner's flying jibboom?

141 A. Yes, sir; I saw the flying jibboom when it got pretty close up to us—perhaps within twenty-five or thirty feet.

Q. Where was it?

A. It was on board the schooner, sticking out at forward.

Q. Where was it with reference to you?

A. It was then about six points, I should judge, *of* the port bow. That is the last time I saw it.

Q. And twenty-five or thirty feet off?

A. Yes, sir; perhaps a little further.

Q. Pointing towards your pilot-house?

A. Yes, sir.

Q. Are you clear about that?

A. Yes, sir.

(Witness was here again requested to illustrate by models, the relative positions of the two vessels at this point of time.)

Q. How heading when you first saw her?

A. West-by-south—by starboard compass.

Q. How have you got the compass here?

A. North-by-east.

Q. Then she sheered off so as to bring her at right angles?

A. Yes, sir; when she came into us.

Q. And while you were engaged in the operation of shifting your helm, or pointing ahead, she overtook and came into you?

A. I know that at the time the schooner was keeping off from us a little; but I knew that she could not continue to keep off, unless she slacked her stern sheets, which was not done—that is, not enough to do us any good.

Q. How long does it take to slacken sheets?

A. Not more than a quarter of a minute.

Cross-examination by Mr. INGERSOLL:

Q. Did you ever tell Mr. Halsey you were seven hundred or eight hundred feet off when you discovered her?

A. I think I told him somewhere about twice as long as the steamer's length.

142 Q. Do you think it possible that you could have told him that it was between three and four lengths?

A. Perhaps I might have thought so at that time, and told him so.

Q. Have you a different opinion upon that subject now than you then had?

A. No, sir.

Q. What makes you think that you might have told him so then?

A. I do not know that I did tell him so; I do not remember what I told.

Q. Are your ideas so indefinite about that, that you may have told him so a few months ago—two months ago—and yet now you can swear that she was only a length and a half, or two lengths off?

A. The fact is, there has been a great deal of talk about the distances between, and sometimes I might have said a thousand feet, and sometimes again, perhaps, a hundred feet, just to get rid of the question.

Q. I am speaking of your conversation with Mr. Halsey, when he was preparing the answer in this case. Do you recollect telling him at that time that the steamer was between three and four lengths off from the schooner?

A. No, sir; I do not recollect it.

Re-direct by Mr. HALSEY:

Q. How long after the collision was it when you made your statement to me at my office?

A. I am sure I could not recollect.

Q. Was it before the boat was raised?

A. Yes, sir.

By Mr. HUNTLEY:

Q. Have you ever heard of the estimate of these lengths?

A. Yes, sir.

Q. Did you all agree at the time in regard to the distance?

143 A. No, sir. After the steamer was sunk, I went to what I call my home in Westerly, and remained there quite a time before I came to Norwich again. I did not see all of the crew of the Norwich together again for some time. I do not know how long.

Q. And during that time did you state to anybody the distance?

A. I do not recollect.

Q. Had you heard anybody state the distance

A. No, sir.

Q. When you saw the crew what was said about it? Was there any comparison of views of distances between you and the crew, or between you and Mr. Tracy, or between you and Mr. Crocker?

A. No, sir; I do not recollect of it.

Q. Never heard Mr. Tracy say how far they were apart?

A. No, sir.

Q. Nor Mr. Crocker?

A. No, sir.

Q. And you came to the conclusion that it was from two hundred to three hundred feet, from your own judgment?

A. Yes, sir.

GEORGE HIBBARD sworn.

By Mr. HALSEY:

Q. Where do you reside?

A. At Norwich.

Q. What is your occupation?

A. Engineer.

Q. How long have you been an engineer?

A. About thirty years.

Q. Were you employed as an engineer on the Norwich in April last?

A. I was, as an assistant.

Q. Were you on board at the time of the collision?

A. I was.

144 Q. On duty?

A. I was.

Q. State what was the first you knew of any difficulty.

A. The bell rung to shut off the engine.

Q. Where were you?

A. I was standing by the engine in the room.

Q. What did you do?

A. I shut off the throttle-valve and stopped the engine.

Q. What was the next?

A. I unhooked the eccentric hook from the rock shaft.

Q. What followed?

A. The next was the crash.

Q. Were there any other signals?

A. The bell rung to shut off, stop, and to go back about the same time.

Q. How were they—rapid, or otherwise?

A. Very rapid. About as fast as I could get from one thing to the other.

Q. And then you heard a crash?

A. Yes, sir.

Q. How was the engine at the time you heard the crash? Were you still working ahead?

A. Yes, sir.

Q. Can you tell how much time elapsed from the time of the first signal till you heard the crash?

A. It would not exceed half a minute—probably twenty-five seconds.

Q. What did you do after the crash?

A. I went on answering the bells, stopping the engine as soon as I could, and went back.

Q. How have you got the compass here?

A. North-by-east.

Q. Then she sheered off so as to bring her at right angles?

A. Yes, sir; when she came into us.

Q. And while you were engaged in the operation of shifting your helm, or pointing ahead, she overtook and came into you?

A. I know that at the time the schooner was keeping off from us a little; but I knew that she could not continue to keep off, unless she slacked her stern sheets, which was not done—that is, not enough to do us any good.

Q. How long does it take to slacken sheets?

A. Not more than a quarter of a minute.

Cross-examination by Mr. **Ingersoll**:

Q. Did you ever tell Mr. Halsey you were seven hundred or eight hundred feet off when you discovered her?

A. I think I told him somewhere about twice as long as the steamer's length.

142 Q. Do you think it possible that you could have told him that it was between three and four lengths?

A. Perhaps I might have thought so at that time, and told him so.

Q. Have you a different opinion upon that subject now than you then had?

A. No, sir.

Q. What makes you think that you might have told him so then?

A. I do not know that I did tell him so; I do not remember what I told.

Q. Are your ideas so indefinite about that, that you may have told him so a few months ago—two months ago—and yet now you can swear that she was only a length and a half, or two lengths off?

A. The fact is, there has been a great deal of talk about the distances between, and sometimes I might have said a thousand feet, and sometimes again, perhaps, a hundred feet, just to get rid of the question.

Q. I am speaking of your conversation with Mr. Halsey, when he was preparing the answer in this case. Do you recollect telling him at that time that the steamer was between three and four lengths off from the schooner?

A. No, sir; I do not recollect it.

Re-direct by Mr. **Halsey**:

Q. How long after the collision was it when you made your statement to me at my office?

A. I am sure I could not recollect.

Q. Was it before the boat was raised?

A. Yes, sir.

By Mr. **Huntley**:

Q. Have you ever heard of the estimate of these lengths?

A. Yes, sir.

Q. Did you all agree at the time in regard to the distance?

143 A. No, sir. After the steamer was sunk, I went to what I call my home in Westerly, and remained there quite a time before I came to Norwich again. I did not see all of the crew of the Norwich together again for some time. I do not know how long.

Q. And during that time did you state to anybody the distance?

A. I do not recollect.

Q. Had you heard anybody state the distance

A. No, sir.

Q. When you saw the crew what was said about it? Was there any comparison of views of distances between you and the crew, or between you and Mr. Tracy, or between you and Mr. Crocker?

A. No, sir; I do not recollect of it.

Q. Never heard Mr. Tracy say how far they were apart?

A. No, sir.

Q. Nor Mr. Crocker?

A. No, sir.

Q. And you came to the conclusion that it was from two hundred to three hundred feet, from your own judgment?

A. Yes, sir.

GEORGE HIBBARD sworn.

By Mr. HALSEY:

Q. Where do you reside?

A. At Norwich.

Q. What is your occupation?

A. Engineer.

Q. How long have you been an engineer?

A. About thirty years.

Q. Were you employed as an engineer on the Norwich in April last?

A. I was, as an assistant.

Q. Were you on board at the time of the collision?

A. I was.

144 Q. On duty?

A. I was.

Q. State what was the first you knew of any difficulty.

A. The bell rung to shut off the engine.

Q. Where were you?

A. I was standing by the engine in the room.

Q. What did you do?

A. I shut off the throttle-valve and stopped the engine.

Q. What was the next?

A. I unhooked the eccentric hook from the rock shaft.

Q. What followed?

A. The next was the crash.

Q. Were there any other signals?

A. The bell rung to shut off, stop, and to go back about the same time.

Q. How were they—rapid, or otherwise?

A. Very rapid. About as fast as I could get from one thing to the other.

Q. And then you heard a crash?

A. Yes, sir.

Q. How was the engine at the time you heard the crash? Were you still working ahead?

A. Yes, sir.

Q. Can you tell how much time elapsed from the time of the first signal till you heard the crash?

A. It would not exceed half a minute—probably twenty-five seconds.

Q. What did you do after the crash?

A. I went on answering the bells, stopping the engine as soon as I could, and went back.

Q. You stopped your engine as soon as you could, and then commenced working back?

A. Yes, sir.

Q. What then?

A. The bell rung to stop it, and we stopped.

Q. After you stopped, what was done?

A. Not much else occurred in the engine-room. I stopped.

Q. Did you know anything of the water rising in the boat?

145 A. Yes, sir. The fireman was in the lower fire-room. I hallooed to him, and told him to tell me when the water came in the fire-room floor. He said he could hear it running in. I left the engine-room and went to call the chief engineer, Mr. Crocker.

Q. Will you describe where this fire-room is—where the boiler is placed in this boat?

A. In the hull.

Q. You have but one boiler, about eight feet ahead of the engine?

A. Yes, sir.

Q. And it is placed in the hull?

A. Yes, sir.

Q. How soon did the fire break out so as to drive you away?

A. I left the engine-room before the flame came out of the furnace. I could not tell exactly the number of minutes; but I think it could not have exceeded ten—possibly twelve.

Q. Do you know the cause of the fire?

A. The flame came out of the furnace door, and the water came up underneath it.

Q. Did the water rise rapidly?

A. Yes, sir, very rapidly.

Q. Did you see anything of the schooner?

A. I did not.

Cross-examination by Mr. HUNTLEY:

Q. How many revolutions were you making just before you heard the signal bell?

A. I do not know—may be somewhere between fifteen and sixteen.

Q. Working pretty fast, were you not?

A. She usually made about that with a load.

Q. How fast would that carry you?

A. Probably ten or eleven miles an hour.

Q. How long was it between your hearing the first signal bell, and your slowing the engine?

146 A. It did not exceed ten seconds before I slowed her. I was standing with my hand leaning on it at the time I first heard it.

Q. How long before you stopped her?

A. Probably fifteen seconds.

Q. That would be twenty-five seconds altogether?

A. Yes, sir.

Q. And it was just at that time you heard the crash?

A. Yes, sir.

Q. How much of her headway would be killed in that time?

A. Not a great deal. You could perceptibly feel it, however.

Q. How fast ought she to be going at that time, allowing her to be going ten or eleven knots at the time you heard the first signal bell?

A. That I could not tell you. She would be slacked so that you could perceptibly feel it, and that is all.

Q. You could not tell as to whether she changed her course or not?
A. No, sir.

By Mr. HALSEY:

Q. Where was the break in the steamer that let in the water so rapidly?
A. It *is* about fifty feet from the bow. I should think nearly abreast of the pilot-house—a little abaft of it, if anything.
Q. Is that such an opening as would let water in pretty fast?
A. I should think it would from what I saw of it.
Q. Was there any other opening in the boat that would let in water at the rate it came into you?
A. No, sir.

147 GEORGE F. NYE sworn.

By Mr. HALSEY:

Q. Where do you reside?
A. In Providence, R. I.
Q. What is your age?
A. Twenty-five.
Q. What is your employment?
A. Pilot.
Q. How long have you been following the water?
A. About seven years.
Q. What was your employment on the steamer "Electra" in April last?
A. Pilot.
Q. First, or second pilot?
A. Second.
Q. Were you on the look-out on the 17th of April?
A. I was.
Q. Where were you on the boat between three and four o'clock on the morning of the 18th?
A. In the pilot-house.
Q. What then was your duty?
A. I was on watch—on the look-out.
Q. Who composed your watch on deck at that time?
A. Mr. Nickerson, wheelsman, and Mr. Gifford, lookout forward.
Q. Did that compose your usual watch?
A. Yes, sir.
Q. What was the weather about the time of this collision?
A. The weather was cloudy and smoky.
Q. How far could you see vessels or steamer's lights, properly trimmed and burning?
A. I should think two miles.
Q. Had you seen the lights of any steamers or vessels that night, about that time?
A. Yes, sir; I had seen lights before that time.
148 Q. Will you state whether you could make out a vessel further by her lights than you could without her having lights?
A. Yes, sir; I could.
Q. Were you on this occasion using anything to aid your observation in looking for vessels?
A. Yes, sir; I was using a night-glass.

Q. How far astern of the Norwich were you at the time you observed that signal?

A. About three-quarters of a mile, I should think.

Q. What signal was that?

A. A whistle?

Q. That was after the collision?

A. Yes, sir.

Q. How were you heading with reference to the Norwich?

A. Right aft of her.

Q. State if you had seen the Norwich for some time before.

A. For about three or four hours.

Q. Could you see any of her lights?

A. Yes, sir.

Q. Which?

A. Her stern lights, her bow lights, and her side lights.

Q. Now state if you discovered a schooner, and if so, how you made her out, and where was she located.

A. I saw her on her port bow, about one point; I discovered her with our night-glass, and examined her closely with it.

By the COURT. How far off was she?

A. I should think she was a mile.

By COURT. This was before the collision?

A. Yes, sir.

Q. How long before?

A. About two minutes.

Q. Will you state how the night-glass enables you to make out a vessel, if it does, when you otherwise might not make her out?

A. It magnifies, and you can, therefore, see plainer at a longer distance.

149 Q. It is of aid to you then in making out a vessel in the dark?

A. Yes, sir.

Q. You say you made out the vessel with your glass, and you think a mile off?

A. Yes, sir.

Q. Did you examine her yourself?

A. Yes, sir.

Q. Did you examine any lights upon her?

A. No lights at all, sir.

Q. State whether you were looking for lights?

A. I was.

Q. If there had been bright lights in the vessel's fore-rigging, would you or not have seen them sooner than you could have seen the vessel in that position?

A. Yes, sir; much sooner.

Q. Could you make out, after examining her, how she was heading?

A. I could tell by the form of her sails.

Q. How was she heading?

A. A northerly course.

Q. How was she with regard to the broadsides of her sails being presented to you?

A. I think she was nearly a broadside on.

Q. Coming then at nearly a right angle to your course?

A. Yes, sir.

Q. Did you see the collision?

A. I saw them when they collided.

Q. Did you afterwards hear the whistle from the Norwich?

A. Yes, sir.

Q. What did you do?

A. We answered in return by blowing the whistle.

Q. Will you go on and state what you did about stopping; on which side you came up to the Norwich?

A. We came up and left her on our port side.

Q. You were on the starboard side of the Norwich?

A. Yes, sir.

150 Q. Did you stop before coming up to her, or abreast of her, or run by her?

A. I stopped a little before we got up to her.

Q. Was the Norwich on fire when you got up to her?

A. No, sir.

Q. How soon after did you discover the fire?

A. In about ten minutes.

Q. How near did you come to the Norwich?

A. Within twice the length of our boat.

Q. Did you see the schooner as you came up?

A. Yes, sir.

Q. Did you pass her?

A. Yes, sir; on her starboard side?

Q. Then you passed between the Norwich and the schooner?

A. Yes, sir.

Q. She was then to the northward of you?

A. Yes, sir.

Q. How near did you pass to the schooner?

A. Within twice her length.

Q. Did you look at her as you passed?

A. Yes, sir; I looked toward her.

Q. Did you see any light on her?

A. Yes, sir.

Q. What light did you see?

A. A dim, green light.

Q. Describe the light, and state whether it is such a light as you would see a mile, or any such distance?

A. No, sir; I should not think I would see the light for half a mile. It was a very dim, green light.

Q. And you did not make it out with your glass when you were looking?

A. No, sir; I did not.

Q. State if you were alongside of the Norwich, and what became of her.

A. She burnt and sunk at the same time, very rapidly.

Q. After rescuing the passengers and crew of the Norwich, as far as you were able to do, did you send out boats to the Norwich?

151 A. We sent out boats as fast as we could lower them.

Q. How long were you detained on that duty?

A. From the time the Norwich commenced sinking.

Q. Were you out in a boat?

A. Yes, sir.

Q. Can you tell how soon she sunk after you knew of the collision?

A. I think she disappeared entirely in about an hour.

Q. After getting the people out of the water on board of your boat, when did the captain and crew of this schooner come on board the "Electra?"

A. They came on board about the time we were getting ready to start—that was about half-past five.

Q. Did you then make any search for the schooner?

A. We run up to where the captain said she was lying.

Q. Could you see her from where you were?

A· No, sir.

Q. Did you find her?

A. Yes, sir.

Q. In what condition was she?

A. In a sinking condition.

Q. How near did you come to her?

A. Within once the length of the boat—two hundred and fifty feet.

Q. What was the condition of her bow?

A. Her bow was knocked in, as near as I could see.

Q. Can you describe it any further—its appearance on each side of the stem?

A. It appeared to me as if it were about equal; as if it had been run into a stone abutment.

Q. Do you mean broken away on each side?

A. About equal on each side.

Q. How were her bulwarks on each side of the stem?

A. I think they were knocked in.

Q. Do you know the force of the wind at that time?

A. I think it was a four-knot breeze.

Q. You say you were out in one of the boats?

A. Yes, sir.

152 Q. Did you notice the wind when you were out in the boats?

A. The wind was easterly.

Q. At what time did you leave the schooner for New York?

A. About six o'clock.

Q. What was the weather then?

A. The weather was foggy.

Q. How long had it been foggy?

A. For about half an hour.

Cross-examination by Mr. HUNTLEY:

Q. What kind of a glass was that night-glass of which you speak?

A. It was what you usually term an opera glass—a marine glass, I suppose it is called on the water.

Q. How large was it?

A. It was the largest size that we could get at that time.

Q. How long had you been in the habit of using it?

A. For about two years.

Q. When did you first use it on this evening?

A. Since twelve o'clock, more or less.

Q. You did not point it toward any particular object, but were making a general observation with it.

A. No, sir; I was looking around to see what I could see.

Q. I understand you to say that the City of Norwich was directly in front of you.

A. Yes, sir; she was as near ahead as we could get it.

Q. How long had she been so?

A. I think she had been so about half or three quarters of an hour I do not remember when she passed.

Q. About how fast were you then going?

A. From ten to eleven knots.

Q. How much faster was she going than you?

A. She was going from eleven to twelve. It took her a good while to get by us.

Q. At the time you heard her whistle she was about three-quarters of a mile ahead of you?

153 A. Yes, sir; near that.

Q. At that time, could you distinctly see her lights?

A. Yes, sir.

Q. Did you see the lights of any vessel at that time?

A. I saw the lights previous to that.

Q. How long previous?

A. Since twelve o'clock.

Q. How long previous was the last one you saw?

A. Fifteen or twenty minutes.

Q. Which way from you was she?

A. We passed her on our starboard side?

Q. Which way was she going?

A. To the westward.

Q. How did you use this glass? Did you take a sweep around the horizon?

A. Yes, sir; took it up and swept round.

Q. After you heard this signal from the City of Norwich, you discovered the schooner?

A. I discovered the schooner before I heard the signal?

Q. How long before?

A. Two or three minutes?

Q. How far must she have been from you at that time?

WITNESS. Do you mean the schooner?

COUNSEL. Yes, sir.

WITNESS. About two miles.

Q. How did she bear from the Norwich?

A. She was to the southward of her some five or six hundred feet; I do not know her bearings.

Q. That was her position when you first discovered her?

A. Yes, sir.

Q. How long after that did you hear the signal of the Norwich?

A. About two or three minutes?

Q. Did she appear to be ahead of the Norwich, that is, further west than the Norwich was?

A. No, sir; she appeared to be directly opposite, about off her beam; the Norwich hadn't got as far as she was when I discovered her.

154 Q. Did you lose sight of the schooner after that?

A. No, sir.

Q. You kept her in sight all the time?

A. Yes, sir; until the collision.

Q. Did you see the collision?

A. I saw her, as I supposed, when they came together.

Q. What did you see?

A. I saw the Norwich ahead of the schooner in pretty close contact.

Q. After that, did you lose sight of the schooner?

A. I did not notice the schooner afterward.

Q. When did you next see her?

A. About six o'clock in the morning.

(Witness here described her position with the models.)

Q. In that position you saw a green light, which, you think, might have been seen half a mile.

A. It could in a very clear night.

Q. Where was that light?

A. In her starboard fore-rigging.

Q. Do you think that a good position in which to see a vessel's lights?

A. I should think we were a little too far ahead in that position.

(Arranged models to conform to position of vessels at the time referred to.)

Q. When you saw the schooner in the morning you passed on her port side, did you?

A. I believe we did.

Q. At what particular point were you when you made your observations of the condition of the schooner?

A. I was in the pilot-house, looking out of the window.

Q. Where was your steamer with reference to the schooner?

A. The steamer was near the schooner.

Q. Was she ahead, astern, or abeam?

A. Nearly abeam.

Q. Aft or forward beam?

A. Aft.

155 Q. And it was in that condition that you discerned the schooner's bow?

A. I observed her bow as we were slewing away from her.

Q. You were then how far from her?

A. About once or twice the length of our steamer.

Q. Did you ever compare the power of this glass with the naked eye, to see the difference?

A. Yes, sir; I have compared it a good many times.

Q. What is the difference?

A. The difference is about one-quarter; that is, you can see one-quarter better with the glass than with the naked eye.

By Mr. HALSEY: You are a brother of the captain of the "Electra," are you not?

A. I am his son.

JOHN H. NICKERSON sworn.

Examined by Mr. HALSEY:

Q. Where do you reside?

A. In Brooklyn, N. Y.

Q. What is your employment?

A. Wheelsman of the steamer "Electra."

Q. How long have you followed the water?

A. Four years, off and on.

Q. What is your age?

A. Twenty-two years and seven months.

Q. Were you on the "Electra" on the night of the 17th and 18th of April last?

A. I was.

Q. At what hours were you on deck?

A. From nine to twelve, and from three to six.

Q. Were you in the pilot-house at the wheel?

A. I was, on the starboard side of the wheel.

Q. Who was in the pilot-house with you?

A. Mr. Nye, the second pilot.

Q. Where was he stationed?

156 A. Midships—middle window.

Q. Forward of the wheel, or port side?

A. Forward of the wheel.

Q. What was he doing there?

A. Looking out.

Q. Did you have a bow look-out?

A. Yes, sir.

Q. Who was he?

A. Mr. Gifford.

Q. Was he at his post?

A. He was.

Q. State if your attention was attracted to a schooner anywhere near the steamer "City of Norwich."

A. I saw Mr. Nye looking through the glasses. I looked in the same direction and saw the schooner.

Q. Where was the schooner when you saw her?

A. Pretty handy to the steamer.

Q. How did the schooner, as you made her out, bear from where you were?

A. She was about a point from where I was.

Q. On which bow?

A. The port bow.

Q. Could you form any opinion as to how far she was from the Norwich when you saw her?

A. No, sir.

Q. Did you make her out from her lights?

A. No, sir.

Q. How did you discover her?

A. I discovered her from her sails.

Q. It was a dark object?

A. Mr. Nye was looking through his glasses, which attracted my attention.

Q. Did you notice the schooner when you passed her, and came up to the Norwich?

A. Yes, sir; I did.

Q. On which side was she?

A. On her starboard bow.

Q. You saw them when they came in collision?

157 A. I saw them pretty close to; I could not tell whether they were to go on, or not.

Q. You could not see distinctly then?

A. No, sir.

Q. Could you see the lights at that time?

A. I saw a dim light.

Q. I am speaking now of your ability to see vessels' lights, or lights of the light-house.

A. I could see them if they were burning.

Q. You say you did not see any on the schooner previous to the collision?

A. No, sir; I did not see any.

Q. How near did you come to the schooner?

A. As much as her length.

Q. Were you in the pilot-house at the time she passed you?

A. Yes, sir; in the pilot-house, at the wheel.

Q. You say there was a dim, green light there. Will you state whether it was a light that you would see any distance at night?

The COURT. State how far you think you could see that light, as the light then was?

A. I do not believe I could see it half a mile.

Q. If the vessel's lights had been burning brightly, how far could you have seen them at that time?

A. A mile and a half, at that time, if burning brightly.

Q. What was the weather at the time as to darkness, or otherwise?

A. It was dark, cloudy, and smokey.

Q. Will you state how far you were astern of the Norwich at the time you saw the schooner?

A. Three-quarters of a mile, I should judge.

Q. Did you notice the schooner in the morning, when you found it after the collision?

A. I did.

Q. How near did you come to her?

A. About once of her length—about two hundred and fifty feet.

158 Q. Did you notice the condition of her bows?

A. Her bows were stoven in, and her head-gear gone.

Cross-examination:

Q. You were a mile from the schooner when you first saw her?

A. No, sir; not quite so far south. The schooner and steamer were pretty near together—I thought they were together at the time.

Q. Then you saw her three-quarters of a mile?

A. Yes, sir.

Q. You were not using the glass yourself?

A. No, sir.

Q. Then you saw with the naked eye?

A. Yes, sir.

Q. What you saw looked like a dark object, did it?

A. Yes, sir.

Q. How was she standing with reference to you, across your bows?

A. To the north.

Q. If, then, her light had been in a proper place at that time, and been shining brightly, you ought to have seen it?

A. Yes, sir.

Q. You mean to say that you can see a dark object in the night, further than you can a dim light?

A. I mean to say that that night, if there had been any kind of a light there at all, I could have seen it.

Q. How far could you see that light?

A. I say I could not see it half a mile.

Q. How far could you see it?

A. I do not exactly know.

Q. What do you mean by that—do you mean to say that you could see it about half a mile?

A. I could see it a quarter of a mile—a dim light—with the naked eye.

159 ISAAC GIFFORD sworn.

Examined by Mr. HALSEY:

Q. What is your age?

A. Twenty-one years.

Q. Where do you reside?

A. New Bedford.

Q. How long have you followed the water?

A. Two years.

Q. Were you at the lookout in April last?

A. Yes, sir.

Q. In what capacity?

A. Bow watchman, or lookout.

Q. Were you on the lookout on the night of the seventeenth and eighteenth of April last?

A. Yes, sir.

Q. What was the weather about the time of this collision?

A. Dark, cloudy, and smoky.

Q. Where were you stationed on the "Electra?"

A. About fifteen or sixteen feet from the bow.

Q. Had you been stationed there for some time prior to the collision, and at the time of the collision?

A. Yes, sir; I had been there all night.

Q. That was your duty?

A. Yes, sir.

Q. Had you observed the lights of the vessels?

A. Yes, sir.

Q. Did you see this schooner before the collision?

A. I did.

Q. What called your attention to it?

A. I was looking out at the sail, looking towards the Norwich to see if we were gaining on her, and happened to see the sail to the southward.

Q. Did you see how near she was to the Norwich when you saw her?

160 A. About two lengths off from the schooner, I should think.

Q. Twice the schooner's length?

A. Yes, sir.

Q. Did you report her to the pilot?

A. I did.

Q. Had he discovered her?

A. He said, "I see it."

Q. You spoke of seeing her in this position; did you make her out from her lights, or how did you make her out?

A. I saw there was a vessel there, but no lights.

Q. At that distance, would a vessel's lights, if burning brightly, be seen before you could make out the vessel?

A. Yes, sir.

Q. How far, at that time, would the vessel's lights, burning brightly, show?

A. A mile and a half, or two miles.

Q. Could you make out when the vessels came together?

A. No, sir.

Q. Did you see the schooner when you passed her?

A. Yes, sir.

Q. Could you tell, when you saw her in that position, before the collision, how she was heading?

A. About north.

Q. When you passed her, how near did you come?

A. About two hundred and fifty feet.

Q. Did you see any light on her then?

A. After she had passed us.

Q. What sort of a light was it?

A. A dim green light.

By the COURT: How long was that after?

A. Shortly after—five minutes.

Q. As you were coming near the schooner you saw this light?

A. Yes, sir.

Q. How near did you come along by the Norwich?

A. About two boats' lengths off.

Q. After you had got through rescuing the people from the Norwich, did you find the schooner in the morning?

161 A. Yes, sir.

Q. About what time?

A. About half past five, I should think.

Q. Did you notice the condition of her bow?

A. I didn't take much notice. I was looking out. It was very thick and foggy.

Cross-examination by Mr. **HUNTLEY**:

Q. About how far was the schooner from the steamer when you first saw the former?

A. About two lengths off to the southward.

Q. How soon after that was the collision?

A. I could not tell you.

Q. Did you lose sight of the schooner in her proximity or nearness to the steamer?

A. Not while she was in front of us.

Q. Was there any moment when you lost sight of the steamer altogether?

A. Not when she had got astern of us.

Q. Did you see the collision so that in your own mind you knew when it occurred?

A. I know I spoke and said, "Those fellows are pretty close together."

Q. But you cannot say that you saw them come together?

A. No, sir.

Q. At that time the steamer was three-quarters of a mile from you?

A. Yes, sir.

Q. How far was the schooner from you when you saw her light?

A. About 250 feet.

Q. How heading?

A. Well, I should think east of north.

Q. You were heading how?

A. About west, half south.

Q. How did she bear to you at the time you saw the lights?

A. Just forward of our beam.

162 Q. And headed nearly from you?

A. I should say that the steamer was heading west-by-south, or by half south.

Q. And the schooner?

A. Heading a little east of north.

Q. That is the position in which you saw the light?

A. Yes, sir.

Q. Was that a good position in which to see it?

A. I have seen it in all positions. I have seen side lights when I have been astern of the vessel.

Q. From the time you first saw the schooner before the collision, until you passed her, did she change her course?

A. Yes, sir; I suppose she changed her course.

Q. Did you notice any change?

A. No, sir.

Q. Then did you at any time see her northward of the steamer?

A. Yes, sir; she came down by the Norwich, and went kind of across our bow.

Q. At that time, when she came north of the Norwich, was she still heading north?

A. I say she was heading east of north, as near as I could judge.

Q. That is after the collision?

A. Yes, sir.

JERRARD LOCKWOOD sworn.

Examined by Mr. **HALSEY**:

Q. Where do you reside?

A. At Greenpoint, Brooklyn.

Q. What is your age?

A. Fifty-six.

Q. What is your occupation?

A. Shipwright.

Q. State how long you have been a shipwright.

A. I went to serve my time in October, 1824.

163 Q. Where are you employed?

A. At John English and Sons'.

Q. Ship-builders?

A. Yes, sir.

Q. Have you examined the hull of the steamer "City of Norwich" since she was raised?

A. Yes, sir.

Q. State if you found any hole or break in it.

A. I superintended the repairing of a break which was made in her side.

Q. Where was that break?

A. It was upon her port side. In the centre of the break—the inner side—was fifty-four feet from her stem.

Q. You say you repaired the damage to her hull?

A. Yes, sir.

Q. Will you describe the condition of the vessel there, and how it was broken?

A. There were three frames broken off at the head of her floor timbers, and one frame on each side broken off at the head of her second futtocks; which is three feet and a half above the floor timbers. There were eighteen streaks of oak plank cut through. The oak plank is three and a half at top side, diminished to three inch down at water line, and then three inch all the way down. The timbers were twelve inches apart; ten inches where they were broken off at the bottom, and six at the top. On the inside of the frames was iron strapping across at right angles—the iron four inches by five eighths.

Q. Iron strapping crossing diagonally?

A. Yes, sir; on the inside of the timbers. On the inside of this strapping the ceiling was, some of it, five inches, and the balance four, of white pine. The planking, which was broken through, was about twelve feet on top, and about four feet at the bottom where it was broken through.

Q. Will you describe the situation of it on the inside. You say there was an iron strapping back of the timbers; describe now the position of this break as it stood in the vessel when you examined it.

164 A. The break had the appearance of being about square in, as the timbers were broken equally on each side of the plank, where they were broken off against the timbers. On the top of the break there were two planks that were not carried in; that was stoven in—broken off by the fastening through the iron straps. They were not broken through, however, into the vessel—the two upper streaks, one of which was twelve-inch yellow pine, and the other six-inch oak, were not carried over.

Q. They were immediately under the guard?

A. Yes, sir; under the deck.

Q. How was it on the inside? If it was held in position in any way by the strapping, describe how it was?

A. The plank on the inside was bulged out with the strapping. The strapping was bulged in, and of course the planking was all hanging there on the inside, when she was taken out.

Q. Was the strapping broken?

A. There was one strap broken; I think that was all.

Q. Do you know how far in these strappings were bent?

A. Probably three feet.

Q. And you repaired the damage to the hull?

A. Yes, sir.

Q. How was her hull in other respects?

A. It was perfect. We had nothing to do outside of her hull, with the exception of a little place where we cut out a plank, which was torn by chains. Had the marks of a chain on it.

Q. How far from the hole was this place?

A. About half way between the hole and the bow.

Q. The scarf and chain then were about twenty-five feet from the bow?

A. Nearly that, I should think.

Q. Was there any injury to the stem?

A. No, sir. We cut out the stem to the scarf; we cut out the old scarf and put another one in.

Q. Will you state your opinion, as a practical man, of the blow that would be required to break that in; whether it would require a blow of force or not?

165 The COURT. That is hardly necessary. If the steamer was broken in in that way, and no other serious damage was done on the forward side, there can be no doubt but that she was struck by that schooner.

Cross-examination by Mr. HUNTLEY:

Q. The bow of this steamer is pretty well guarded by fenders, is it not?

A. Yes, sir.

Q. State how far apart they are.

A. I should think they were about eighteen inches, may be a little more or a little less.

Q. How near the main deck is the top one?

A. Down two feet, or more—between there and the water-line.

Q. Have you ever seen this steamer when she was loaded?

A. Yes, sir.

Q. With a fair load on about how high out of water would be her main deck, forward?

A. It would probably be nine feet and a half or ten feet.

Q. You say you did not see the marks of any disaster at her stem?

A. No, sir.

Q. There is a pretty heavy piece of timber that goes round the bow and round the stem, that is called a "chock," isn't there?

A. Yes, sir; that was taken off.

Q. Was that whole and sound.

A. All, with the exception of where the stem broke off. At the top the ends were split off. There was no stem there above the main deck, when I saw her.

Q. Didn't you observe that this chock seemed to be round and splintered?

A. No, sir.

Q. Did you notice that any considerable piece of it was gone?

A. Just off the forward end.

166 Q. How much?

A. It had the appearance of being down on the rocks. It slipped back probably eighteen inches. It might be that some of the pieces slid off where the stem had split off.

Q. Can you tell from the looks of this piece of timber where it came from?

A. I should think that was a piece split off from the chock.

Q. Directly from her stem?

A. Just above the main deck.

Q. How far?

A. About twenty inches high.

Q. And came down on to the main deck?

A. Yes, sir.

Q. You are sure this is the piece?

A. Yes, sir; I am.

Q. When was it you saw the vessel?

A. When she was first taken out of the dock; it was there that I got this piece.

Q. How high above this main deck was the upper deck?

A. I think about eleven feet.

Q. The flag-staff projected how far above the water deck?

A. It stood on the upper deck.

Q. Did it come down to the lower deck?

A. I think not; I think it stopped on the upper deck.

Q. She was all housed in forward above the deck?

A. Yes, sir; as much as she could be.

Q. How high was this upper deck from the main deck at the place where this hole is?

A. Well, I think about nineteen feet would fetch it through.

Q. How much water did she draw?

A. About from six feet and a half to seven feet; I cannot tell exactly.

Q. Drawing six and a half or seven feet, how high out of water would her guard be?

A. I should judge about eight feet.

Q. Suppose a steamer going at a very rapid rate should strike
167 a vessel directly in her beam, what effect would that produce on
the steamer—the steamer striking her exactly stem on?

A. Well, I have known instances where they went right through them.

Q. What did the steamer show?

A. She didn't show that she was marked a great deal. I think I have heard of cases where they scarcely showed anything. Take one of those cases on the Hudson River, for instance, where a vessel run right through another, and yet she herself was damaged but very little.

Q. You could not expect the wood ends to be started very much?

A. I have seen them started, but that is owing altogether to the vessel that she run into. I think in this case nothing saved the steamer but her iron strapping.

JOSEPH A. GARDNER sworn.

By Mr. HALSEY:

Q. Where do you reside?

A. At Greenpoint, Brooklyn.

Q. What is your age?

A. Fifty-three last May.

Q. What is your employment?

A. I am a shipwright.

Q. Where do you work?

A. At John English & Sons', and have been working there for the last sixteen years.

Q. State whether you worked upon this steamer, the "City of Norwich."

A. I did some, not a great deal; I had charge of fitting her out after she was built.

Q. Was she built at Mr. English's yard?

A. Yes, sir.

Q. Were you on board of the steamer at the time of this collision?

A. I was.

Q. Where were you?

168 A. I was asleep at the time of the collision; the shock awoke me.

Q. What did you do?

A. I turned out as quick as I could get out, and dressed myself.

Q. What did you discover?

A. I dressed myself and came out of my room. When I got out of my room, and went on deck, the hands were wild with excitement, hallooing, &c. I first ran round on the starboard side, and saw it was pretty hazy.

Q. Did you see any lights anywhere?

A. No, sir; I looked round, but I could see no lights; then I turned and walked forward; in going forward I met these deck hands, and I asked them what was the matter; they said the boat was sinking. I walked forward, and went past the pilot-house, and saw the pilot in there. I thought to myself that it couldn't be anything so serious as long as he was in there. Then I walked forward, and went right past the pilot-house over to the port side, looked over in that way, when I saw this joiner work all stoven in—torn right out.

Q. How was she further forward?

A. Her stem appeared perfect; her flag-staff was standing; everything was all right there.

Q. Do you know anything about the water coming in?

A. I do not; when I saw this hole the bows forward looked to me to be firm.

Q. Have you seen her since?

A. Yes, sir.

Q. How does the hole under the guard correspond with the break in the joiner's work above the guard?

A. From the first day I got ashore, I presume I told a dozen people where this hole in the joiner's work was—just forward of the gangway.

169 Cross-examination by Mr. HUNTLEY:

Q. You were on the upper deck all this time?

A. I was on the permanent deck.

Q. It is the same one on which the pilot-house is?

A. Yes, sir.

Q. Does that permanent deck project from the joiner work of which you speak?

A. No, sir; it comes up right over her rail.

Q. How far forward did you go?

A. I stepped along some three or four steps from where this hole was and looked over, and saw the stem was firm.

Q. How far were you from the stem?

A. I suppose I was some twenty feet.

Capt. DANIEL B. STURGIS sworn.

Examined by Mr. HALSEY:

Q. Where do you reside?

A. In Norwich.

Q. What is your age?

A. Forty-nine.

Q. What is your employment?

A. Steamboating.

Q. How long have you followed the water?

A. Thirty-five years.

Q. What part of the time on steamboats, and what part of the time on sailing vessels?

A. Twenty-four years on sailing vessels; eleven years on steamboats.

Q. What part of the time through the Sound?

A. The whole time.

Q. How long had you been in command of the City of Norwich, at the time of this collision in April last?

A. Four years, lacking a month.

Q. When was she built?

170 A. In 1862.

Q. You were on board of her?

A. I was.

Q. State whether she was a staunch vessel, and in good order—her engine, machinery, &c.

A. Yes, sir; she was, in every respect.

Q. How was she officered and manned?

A. Our entire crew was thirty-five men.

Q. You are her captain—what other officers have you?

A. There were two pilots, one wheelsman, one look-out man forward, a watchman on the main deck, two engineers, a steward and a clerk—then there were laborers, deck hands, and waiters.

Q. Any mates?

A. Yes, sir; two mates.

Q. Who was your look-out?

A. George Crocker.

Q. You were on the night of this collision—how many lights did you carry?

A. A stem bow light.

Q. Where was the bow light?

A. On the forward part of the stem.

Q. What kind of a light was that?

A. One of the first order.

Q. What color?

A. White.

Q. Was it a strong light?

A. Yes, sir; a very strong light—a green light on the starboard side, and a red on the port.

Q. Was there any other light?

A. There was a stern light.

Q. What kind of a light was that?

A. Two large globe lanterns.

Q. Where were they placed?

A. Thirty feet above the permanent deck, on the flag-staff.

Q. How were these side lights placed?

A. In boxes built according to law.

171 Q. Will you state where you were at the time of the collision?

A. I was asleep.

Q. Whereabouts on the boat?

A. In the forward room next the pilot-house on the starboard side.

Q. Whose watch on deck was it?

A. Captain Tracy's.

Q. State now if you were aroused by the collision?

A. I was.

Q. What did you do?

A. Jumped out of my birth and looked at my watch.

Q. Do you remember what time it was by your watch?

A. Three fifty.

Q. What did you do?

A. I went out of my room and went round forward of the pilot-house.

Q. Did you stop to dress?

A. No, sir; I never undress.

Q. Now go on and state what you discovered, and what you did.

A. As I was passing the pilot-house, I asked the pilot what the trouble was. He reported that the schooner had run into them. I went to the side immediately, about half way from the pilot-house to the paddle-wheel, looked over at the port side, and saw a three-masted schooner.

Q. How was she lying, with reference to you?

A. She was lying nearly parallel with us—head on.

Q. With head towards you, where you stood?

A. Yes, sir; we were going very rapidly past her.

Q. She then fell astern?

A. I turned and went forward to the capstan; about the time I got to the capstan some one came up from the engine-room and reported the boat filling very fast.

Q. Where was your engine-room?

A. Forward of the paddle-wheel; about one-third of the way from that to the pilot-house.

Q. Was it below deck?

172 A. It was between two decks—permanent deck and the main deck.

Q. After making this report, what did you do?

A. I run aft as fast as possible and called the passengers; then ordered the men to lower the boats, and blew the signal—three whistles—for the "Electra" to stop. Went on the upper deck, tolled the bell as a signal; came down off the upper deck and went aft; found every one overboard; started to go forward; fire met me and drove me back. By the time I got aft the fire had reached there, and then I had to go overboard.

Q. Who picked you up?

A. The steamer "Electra."

Q. Will you state how soon after the collision the boat went down?

A. From the time I first turned out until I went overboard and my watch stopped, it was fourteen minutes and a half.

Q. Then as to the time she sunk?

A. I could not say, but I judge three-quarters of an hour.

Q. After everybody who could be found was picked up, where did the "Electra" go? Did you look for the schooner?

A. Yes, sir.

Q. How many lives were lost?

A. Fourteen.

Q. Any passengers?

A. Two passengers.

Q. Who else?

A. One greaser, and eleven deck hands.

Q. Did you see the schooner in the morning?

A. I did.

Q. How near did you come to her?

A. I should say 200 feet, as near as I can judge.

Q. Did you examine the condition of her bow?

A. I did not.

Q. Did you look for a light?

A. I did.

Q. What did you discover?

173 A. I discovered a green light, but it was very faint indeed.

Q. Did you look particularly for a light?

A. I did.

Q. How far did you say that light could be seen?

A. I should not suppose it could be seen over five hundred feet.

Q. Did you go with the wreckers who raised the steamer?

A. Yes, sir.

Q. Which side was she?

A. Bottom up—so the diver reported.

Q. How did she come up?

A. Bottom up.

Q. At the time she was raised was the guard, which appears upon the photograph to be broken off, along in the neighborhood of this break, broken, as it now appears?

A. No, sir; no part of her guards were broken when she came up to the top of the water.

Q. How had that guard been broken away?

A. They were cut away and broken by scows.

Q. The break then was entirely under the guard?

A. Yes, sir.

Q. How much did the guard overleap the boat at that place?

A. About five feet.

Q. How high would the guard be above the water line, as you were loaded at that time?

A. About eight feet.

Q. How high would the main deck be above the water at the stem?

A. Ten feet.

Q. And the upper deck twelve feet above that?

A. Yes, sir.

Q. Have you examined the stem of the steamer to see that there was any injury to the stem?

A. I have, next below the main deck.

Q. Any injury above?

A. All gone.

174 Q. At what time was it all gone—when she was raised?

A. Yes, sir.

Q. As she was loaded, what would be the distance from the water line to the floor of the main deck at her stem?

A. Ten feet.

Q. You state you were forward of the pilot-house after the collision. How was it with her stem and flag-staff at that time?

A. All perfect.

Q. How was the stem-piece above the main deck?

A. It was scarfed by the main deck.

Q. Where was that broken off?

A. In the scarf.

Q. Did you examine this hole in the side, as represented there?

A. I did.

Q. Will you describe it to the court?

A. It was broken square in—wider at the top than at the bottom.

Q. Did anything prevent it going any further?

A. The iron strapping.

Q. Something has been said about a hole in addition to this large break. Is there a hole there?

A. Yes, sir.

Q. How was that made?

A. By a chain put in there. The diver went and stove a dead-light in there, and tottled it in the inside, for the purpose of raising the vessel.

Q. You had dead-lights along there?

A. Yes, sir; five, I think, each side forward of the wheel, and three feet on each side.

Q. With regard to that piece of wood that is there, do you know how that was placed upon the stem?

A. Yes, sir; that was on the chock, forward, as we term it.

Q. How was it with reference to where the stem is broken off from the scarf?

A. Abreast of that, I should think.

Q. You were there, you say, when she was raised?

175 A. Yes, sir; the entire time. From the time they commenced to raise her until we arrived in New York.

Q. Where did you turn her?

A. In Oyster Bay—forty-eight feet of water.

Q. Which was the lower—her head or stern, as she lay?

A. Her head was the lower. Her stern did not touch the bottom at all. She laid on her stem, wheel-tops, and walking beam.

Q. How far are the wheels from the stem?

A. They say the forward part of the wheel is about one hundred feet.

Q. What is the length of your steamer?

A. Two hundred feet.

Q. Tonnage?

A. The new measurement thirteen hundred tons; of the old measurement, about seven.

Q. What is the difference?

A. Before they did not measure anything above our main deck; now they measure everything.

Q. Some inquiry was made yesterday about men in the forecastle. Will you describe where that forecastle was, and how constructed?

A. In the extreme forward end of the boat; hatchway about twenty-eight inches square.

Q. In the main deck?

A. Yes, sir. Hatchway right over it on the permanent deck, about the same size, with steps to go up.

Q. How is this forecastle constructed, below the main deck; partitioned off?

A. Aft part of it water-tight bulkhead.

Q. Is there any trouble to be experienced in getting out of that forecastle?

A. No, sir; ordinarily there is none.

Q. Is there where the men slept?

A. Yes, sir.

Q. Were the men out of the forecastle after the collision?

A. Yes, sir.

176 Cross-examination by Mr. HUNTLEY:

Q. What was the character of the bottom of the river, where this steamer was sunk? Was it a soft bottom?

A. Yes, sir.

Q. Muddy, was it not?

A. Yes, sir.

A. At what time of the day or evening do you usually set your lights?

A. Before we leave the dock at New London.

Q. About what time did you leave?

A. We left at a quarter past ten that night.

Q. What is your usual hour?

A. That is about our usual hour; we have no regular hour; we leave as soon as we get our freight on.

Q. Are those lights trimmed during the night?

A. No, sir.

Q. Do they burn all night?

A. Yes, sir.

Q. What oil do you use?

A. Kerosene oil in our head lights, and sperm oil in our other lights—the best we can buy.

Q. Have you ever heard of Baker's signal oil?

A. I have.

Q. Have you ever used it?

A. I have.

Q. I did not hear what you said about the men being out of the forecastle; do you mean to say they all came out?

A. I wouldn't say they were all out; I say they were out.

Q. Do you know where those were who were lost?

A. No, sir; I do not know what part of the boat they came from when they leaped overboard.

Q. You say you did not see all of your men?

A. I do not know as I did.

Q. Then you do not know where those who were lost were on board of your boat?

A. I know where eight of them were.

177 Q. Where were they?

A. Fished up from alongside the bottom of the boat, and taken ashore and buried.

Q. Do you know where they were on the boat when she sank?

A. I presume they were overboard; I do not know, however.

Q. About how late in the morning was it when you run alongside the schooner, aboard the "Electra?"

A. I could not say.

Q. How was the light—I mean the daylight?

A. It was quite light.

Q. Was it not at that time broad daylight?

A. No, sir; I should think not.

Q. Did you lie about abreast of the schooner?

A. Yes, sir.

Q. At that time was it not broad daylight?

A. No, sir.

Q. But approaching it?

A. Yes, sir.

Q. In what position were you when you discovered the schooner's lights?

A. We were laying a little ahead of her.

Q. And on her beam?

A. A little forward of the beam, about two hundred feet distant.

Q. And at that time you saw a light where?

A. On her starboard side; a green light.

Q. Was that a good time of the day in which you could judge correctly whether that was a bright light or not?

A. Yes, sir.

Q. Then you can tell a good light about daybreak as well as you can in the night?

A. Yes, sir.

Q. Was it not near six o'clock at that time?

A. I could not say as to what time it was; my watch had stopped.

178 Q. How was the weather?

A. Rather thick.

Q. Thick and foggy, was it not?

A. Yes, sir.

Q. Did any one else on board the "Electra" see that light?

A. I do not know that they did.

Q. Did you call the attention of any one to it?

A. I did.

Q. Was any one standing around you at the time?

A. Yes, sir; but I could not say who they were.

Q. Was Capt. Nye?

A. No, sir; he was in the pilot-house.

Q. Was Mr. Howard?

A. He was also in the pilot-house.

Q. Where were you?

A. Standing outside.

Q. Near what?

A. Near the pilot-house.

Re-direct by Mr. HALSEY:

Q. Were there any bodies found in the steamer after the collision?

A. No, sir.

Q. You say that you used signal oil at one time, but are now using sperm oil?

A. Yes, sir.

Q. Did you ever use it on this boat?

A. No, sir.

Q. On what boat did you use it?

A. On the Commodore.

Q. Do you continue to use it?

A. No, sir; it will not answer our purpose.

Q. What did you use instead of it?

A. Sperm oil.

Q. Why did not this signal oil answer your purpose?

A. Because it wouldn't burn all night.

179 Q. Do you know what oil the other boats on that line used?

A. Sperm oil—three dollars a gallon.

Re-cross-examination by Mr. HUNTLEY:

Q. Where did you get your Baker's signal oil that would not burn all night?

A. In New York, of Cook & Davis.

Q. Where is that?

A. Corner of Norwich and Greenwich streets.

Q. How do you know it was Baker's signal oil?

A. They told me it was.

Q. Is that all you know about it?

A. Yes, sir.

Q. How came you in the first instance to use it?

A. It was recommended to me as being a very superior oil.

Q. By whom?

A. By the grocerman where I get my oil.

Q. Did you ever hear anybody else recommend it?

A. Yes, sir.

Q. Don't you know that that stands higher as a lighting substance than any other oil?

A. No, sir.

Q. Will you state anything that stands in public estimation—say in New York—higher than that?

A. Sperm *city* oil.

Q. Anything else?

A. Kerosene oil.

Q. Do you know what steamships sailing out of the port of New York usually use?

A. I do not.

Q. Have you not understood what they generally use?

A. No, sir; all I know is from my own experience.

Q. And the only experience you have had has been with the oil you have bought of "Cook & Davis?"

A. Yes, sir.

Q. You never bought any at Baker's place, on South street?

180 A. No, sir.

Q. You have seen Baker's lamps that hang out on South street, have you not?

A. Yes, sir.

Q. You have seen them burning all night and all day?

A. I do not know how long they had been burning.

Q. Did you ever enquire of Mr. Baker?

A. I never did.

By Mr. HALSEY:

Q. Did the steamer part her chains after you had partly raised her?

A. Yes, sir; she broke her chains and dropped twice after we had partly raised her.

(Depositions of Martin S. Persons, Joseph W. Nye, James A. Howard, Charles B. Smith and David Crowley read.)

Martin S. Person's deposition.

I reside in Bangor, Maine. I am a pilot on the steamer "Electra" at present.

Q. State your experience as mariner.

A. I followed the sea some thirty years; as master eight or ten years; have been in steamers some three years, side-wheel and propeller, as mate and pilot; have been mate and pilot some two years through Long Island Sound.

Q. Was you employed on the steamer "Electra" on the 17th and 18th April last; if so, in what capacity?

A. I was, in capacity of pilot.

Q. On what voyage was the steamer bound at that time?

A. From Providence toward New York, through the Sound.

Q. State if you saw the steamer "City of Norwich" on the night of 17th and 18th of April; and if so, where and in what condition.

181 A. I first saw her when she was on fire, apparently when the fire had just commenced; she was between Huntington and Lloyd's Neck.

Q. How was your attention first called to her condition, and by whom?

A. By the second pilot, Mr. Nye, saying that the "City of Norwich" was alongside on fire.

Q. Where was you at the time you were called?

A. In my berth in the pilot-house, in the rear of the wheel-house. It was my watch below at that time.

Q. What part of the "City of Norwich" was on fire when you first saw her?

A. That portion of her in the vicinity of the smoke-stack and engine.

Q. What did you next do?

A. After being called, I put on my boots, coat, and hat, and went on deck.

Q. In what position was the Norwich from you, and how far?

A. She bore on her port side some four or five hundred feet distant from the boat I was in—the Electra. She bore as near south as I can now remember.

Q. What was the weather at that time?

A. Smoky and hazy. It was quite dark—dark.

Q. Did you see anything of the schooner General Van Vliet, at that time?

A. Did not.

Q. How soon after you first saw the steamer did she sink?

A. I should think some twenty to thirty minutes—that is my judgment.

Q. State if you saw the schooner General Van Vliet afterwards; and if so, at what time.

A. I saw the schooner Van Vliet, or was reported to be her, about six o'clock in the morning, bearing on our starboard bow something like half a mile off.

Q. What was the weather at that time?

A. Foggy.

Q. Describe how you approached the schooner, on which side of her you passed, and whether you went on board of her.

182 A. We approached the schooner on the port side, very slowly, stopped the engine, and remained in consultation opposite the vessel some five minutes; the wind being east, naturally pressed the vessel ahead.

Q. State whether you were in a position to see the condition of the schooner's bow and whether you did notice its condition.

A. I was in a position to see, and did see the condition of her bow.

Q. Describe its condition.

A. The bowsprit and jibboom was carried away, and floating alongside; the bulwarks of the bows broken in—bent aft. I could not say whether she had a billet head; her bows were broken in and timbers bent aft. I don't know that I particularly noticed the plank-shear. The bows of the vessel appeared to be broomed up, as though she had run into some vessel head on.

Q. State whether you were in a position to see her forward starboard rigging; and if so, whether you did see it.

(First clause of the question objected to by libellant's counsel.)

A. I was in a position to see it, and did see her forward rigging.

Q. State whether or not there was a light burning in the forward rigging.

(Objected to by libellant's counsel, on the ground that it does not yet appear that the witness was in a position to see the light, if one had been there.)

A. I did not see a light.

Q. State whether you were in such a position as to be enabled to see the light if there had been one in the forward starboard rigging.

(Objected to, as witness should describe his position.)

A. I was in a position where, if my attention had been attracted to a light, and there had been one, I should think I would have seen it.

Q. What leads you to think you would have seen it?

(Objected to by libellant's counsel.)

183 A. Because my attention, when on duty, is attracted by a light in the night more than any other one thing.

Q. Can you state whether the captain and crew of the schooner came on board the Electra, and at what time?

A. I can; they came on board about twenty minutes previous to our finding the schooner, as near as I can judge.

Q. When did your watch terminate next prior to the collision, and when did you again go on duty?

A. My deck watch expired at twelve o'clock that night; from the time I was called at the fire I was on duty until we arrived at New York.

Cross-examined for libellant by Mr. Huntley:

Q. From discovering the schooner at about six o'clock, did you stop your engine, and, if so, where, with reference to you distance from the schooner?

A. I don't recollect at the exact point where we stopped the engine; we were running slow when we discovered her.

Q. While your engine was stopped was the schooner or your boat gaining ahead?

A. I can't explain any better than I did at first. After stopping the engine the boat naturally reached ahead of the vessel, the wind being from the northeast, as I now remember.

Q. Did not the schooner move ahead?

A. I think she did, very slightly.

Q. When you again started your engine, what was your position with reference to the schooner?

A. Ahead of her. Looking back, saw the schooner nearly ahead toward us; when swinging and leaving her, we left her nearly astern of us.

Q. While your engine was stopped did you and she lay on parallel lines, or otherwise?

A. On parallel lines. I can't say that we were laying still at any time.

Q. Which was ahead?

A. We were abreast of each other at this time; you bring to my mind in speaking of it.

184 Q. Where were you standing?

A. In the pilot-house.

Q. Was it in this position that you saw the condition of the schooner's bow, as you have described it?

A. To answer you direct, sir, it would not give you a proper knowledge of the view I had of it. I saw the vessel from the time we saw her until we passed her, and she was astern, and watched her very carefully. We held a consultation whether to take her in tow or not.

Q. How near were you to the schooner's bow when you passed her, and which way did she bear from your steamer?

A. Some 400 feet distant, and abeam of us.

Q. As you passed her did you sheer your boat?

A. Yes, sir; after passing her, to bring us on our course.

Q. Did you have any other object in searching for the schooner and in examining her, than to determine if you should tow her in?

A. As far as I understood it, the sole object was to save the property, if it could be saved.

Q. Were you at any time nearer than about 400 feet of the schooner?

A. No, sir.

Q. When you were aroused did you discover any lights ashore?

A. No, sir.

Q. Why not?

A. The illumination of the burning steamer overcome the lights in case there had been any to be seen.

Q. Was it not broad daylight when you discovered the schooner?

A. It was.

Re-direct resumed by Mr. HALSEY:

Q. What was the force of the wind at the time you saw the Norwich on fire?

A. Give it to you in sea phrase, I should say six knots per hour.

185 Q. Do you remember of any circumstances which called your attention to the force of the wind?

(Objected to by libellant's counsel.)

A. Having to rescue those drowning people I thought we should have to row against the wind, and it struck me very forcibly. I didn't go in the boat, but assisted in launching them.

Re-cross resumed:

Q. Which way did you head when you lay on parallel lines with the schooner?

A. About west-northwest, and the schooner headed about the same.

Q. When you launched your boat, how did the Norwich bear from you?

A. South, and abeam from us.

Q. When the persons overboard were taken in the small boats, how did those boats bear from you?

A. That would come as near south as anything.

M. S. PERSONS.

Examination adjourned to September 4th, at 11 a. m.

Joseph W. Nye's deposition.

I reside in Massachusetts. I am a master mariner.

Q. Were you commander of the steamer Electra on the 17th and 18th of April last?

A. Yes, sir.

Q. On what voyage was the steamer bound on the night of the 17th and 18th of April last?

A. From Providence to New York, through the Long Island Sound.

Q. Did you see the steamer City of Norwich that night?

A. I did, sir.

Q. Whereabouts?

186 A. Off Huntington.

Q. Do you know anything of the disaster to the City of Norwich that night?

A. Yes, sir.

Q. State your knowledge on that subject.

A. We were bound up the sound that night, when I was called up about three o'clock, I think; the steamer Norwich was then a short distance ahead of us, probably a half of a mile, I can't say exactly. They blowed their whistles on the Norwich about that time; they were signals of distress; we made a stop; the boat was going ahead pretty fast, and we ran by her and had to go back; we see she was on fire at that time; saw the smoke coming out of her; we went to work immediately and lowered our boats and sent them off to her; while the boats off going to the Norwich I noticed there was a schooner off our starboard side.

Q. On which side of the Norwich did the Electra pass?

A. On the starboard of the Norwich. Left the Norwich on the left.

Q. About how near to her did you pass?

A. I should say seven or eight hundred feet, perhaps twice the length of the boat.

Q. About how far was the schooner from you when you passed?

A. I should judge about the same distance.

Q. Did you see any light on the steamer; if so, what lights?

A. Yes, sir. I saw the stem lights, and saw other lights after we passed.

Q. Did you go back after passing?

A. Yes, sir.

Q. Did you see any light on the schooner?

A. No, sir.

Q. What was the weather?

A. It was a dark night; little thick in the southwest, and appearance of fog.

Q. Did you see the schooner afterwards?

A. Yes, sir.

Q. Did you run close alongside of her?

187 A. Yes, sir, we went close along side of her, pretty near to her, from four to five hundred feet, more or less, I should say.

Q. Describe the appearance of the schooner about her bow.

(Objected to by libellant's counsel, it not appearing that witness noticed her bow.)

A. The vessel was stove in forward, and had the appearance of having run into a dock pier or bulkhead. Her bow was all stove in on both sides—right square in. The bowsprit and jibboom were hanging alongside. I don't know as I saw them particularly.

Q. About how many feet from the stem on each side?

A. I should say seven or eight feet; that is something I could not swear to *that* exactly, as I was not acquainted with the vessel; never saw her before; don't know whether she was a sharp or blunt bow.

Q. Did you notice the appearance of the schooner?

A. Yes, sir.

Q. Had you been requested by any one to find her?

A. Yes, sir; I had been so requested by her captain.

Q. What was the weather at the time you found her?

A. Foggy.

Q. About what time in the morning did you find her?

A. About six o'clock in the morning.

Q. Did you discover any light or lights upon the schooner at this time?

A. No, sir.

Q. You say that the night was dark at the time the Electra passed the Norwich; how far, in your judgment, could a vessel's signal lights, if burning brightly, be seen at that time?

A. Three or four miles.

Cross-examined by Mr. HUNTLEY, counsel for libellants:

Q. How did the schooner bear from you when you first made her?

A. I should say north.

Q. How with relation to the Electra?

A. Off our beam.

188 Q. On what part of the Electra were you at that time?

A. I was on the forward part on the bow, forward of the pilot-house.

Q. Did the schooner bear forward or astern of your position?

A. She was right square from me.

Q. Which way was the schooner heading when you made her?

A. As near as I could judge she was heading northwesterly, or west-northwest, someway that way; I didn't take particular notice.

Q. Then her stem was toward you?

A. She was quartering on us stemwise; we were heading west by south at that time.

Q. Are you sure that in backing your boat you did not change your course?

A. We didn't change it much; not but very little.

Q. When you first made the schooner, which end of her was nearer to you?

A. I should say the stem was nearest to us.

Q. How far distant was she when you first made her?

A. Some 600 or 700 feet.

Q. State what part of her you first saw?

A. I saw her sails; couldn't see anything else particularly.

Q. State what sails you saw, and their position.

A. Foresail, mainsail, main peak down; I think foresail hanging by throat halyards; can't say exactly; and the sails were hanging towards the southward.

Q. How long did you hold this position with reference to the schooner?

A. I don't know, sir; I didn't notice her after this time; she went out of sight very soon, and I had something else to attend to.

Q. When did you determine that you were off Huntington?

A. I knew it the moment I came on deck; I saw Huntington light.

Q. How far distant was that light from you?

A. A mile and a half.

189 Q. What other light, if any, did you see?

A. I didn't notice any other particularly.

Q. Was Huntington light in plain sight?

A. Yes, sir.

Q. Could you at that time have seen the lights on the mainland or Connecticut shore, if you had looked for them?

A. I think I could have seen the light-house if I had looked for it.

Q. What light-house do you allude to?

A. I allude to Norwalk Island, on the north shore.

Q. How far distant from you was that light-house?

A. About six miles, I suppose.

Q. What do you mean when you say you could have seen the light-house if you had looked?

A. I meant I could see the light in the house; not the light-house.

Q. How can you fix the time of your coming on deck?

A. By my pilot; I asked him the time, and I think he said three o'clock.

Q. When did you next see the schooner after you lost sight of her, as you have stated?

A. About six o'clock, sir.

Q. Was it then daylight?

A. Yes, sir.

Q. How did she bear from you when you first saw her?

A. Northwest, northerly; she was off our starboard bow a little; we ran northwest some distance to find her?

Q. How was she lying when you first saw her after six o'clock.

A. I think she was heading about northwest, sails hanging to the south'ard on her port side.

Q. How far distant was she when you discovered her?

A. About a quarter of a mile; perhaps not so far.

Q. What did you do?

A. Nothing but look at her.

Q. I mean what was done by the Electra after you first saw the schooner, at about six o'clock?

190 A. We hauled up for her, and went along pretty near to her.

Q. On which side of her did you approach?

A. On her port side.

Q. How near?

A. Perhaps twice the length of the boat—six or seven hundred feet.

Q. Did you stop and lie in any one position?

A. We stopped the engine; yes, sir.

Q. Did your boat lay still?

A. I think she did.

Q. How did the schooner bear from her while she was lying still?

A. On the northeast, off of our starboard side.

Q. Nearer your bow or stern?

A. Nearest the stem I should say.

Q. While so lying, where was your own position?

A. I went into the pilot-house.

Q. Did that bring the schooner abreast of you?

A. A little abaft of abreast.

Q. While so lying, how near were you to the schooner?

A. Six or seven hundred feet.

Q. What was your object in looking for her?

A. To see whether she had sunk; to see if we could find her, calculating to tow her in if she had not been so low, but found she was sinking and let her go.

Q. How low was she at that time?

A. Her decks were about level with the water, sir.

Q. Had you any other object than you have described?

A. No, sir.

Q. Did you notice the schooner's head sails?

A. I noticed she hadn't any, sir.

Q. Do you mean to say the head sails were all down?

A. Yes, sir.

Q. Where were they?

A. Overboard.

Q. On which side?

A. I couldn't say, sir.

191 Q. Are you sure the jib was not hanging by the halyards?

A. To the best of my knowledge, they were not.

Q. Where was the bowsprit?

A. Overboard.

Q. On which side?

A. Hanging by the stays; I don't know whether on the port side or starboard.

Q. What part of it did you see?

A. I don't know, sir, what part of it.

Q. Did you see any part of it?

A. I think I did see some part of it.

Q. Then why can't you tell what part you saw?

A. I can't tell what part I saw, because most of it was under water; part was out. It might have been under the vessel, some of it, as she was forging ahead.

Q. Did you see the jibboom?

A. No, sir.

Q. Did you see the heel of the bowsprit?

A. No, sir.

Q. Did you see the cap of the bowsprit?

A. I am not positive whether I did or not.

Q. Do you mean by that answer that you have no recollection on the subject?

A. Yes, sir.

Q. Did you see either of the schooner's anchors?

A. No, sir.

Q. Did you see either of the bowsprit shrouds?

A. No, sir.

Q. Did you see either cat-head?

A. No, sir.

Q. Why did you not see any of these things?

A. Well, I don't know that they were there; I don't recollect of seeing them.

Q. Will you swear that they were not there?

A. No, sir.

Q. How thick was the fog at this time?

A. It was what we call a pretty thick fog; we could see, perhaps, a quarter of a mile.

192 Q. Could you see objects on board the schooner distinctly?

A. Yes, sir.

Q. Did you notice the schooner's cut-water?

A. No, sir.

Q. State exactly the condition of the schooner's bow as you saw it at that time.

A. Her bow was all stove in, sir.

Q. What did you see which makes you say her bow was all stove in?

A. Well, her bow was gone, five or six feet of it wasn't there.

Q. Can you tell whether the bow was stove in or cut off?

A. By the appearance of it it was stove in.

Q. Describe the appearance from which you say it was stove in?

A. It was all bruised up forward; it had the appearance of running into a bulkhead.

Q. Describe that appearance of running into a bulkhead.

A. I don't know what to say now.

Q. How long time were you looking at the schooner, as you have described?

A. I don't know, sir.

Q. About how long?

A. Two or three minutes.

Q. Did you look for anything else on or about the schooner besides her bow?

A. No, sir.

Q. Give the direction and force of the wind when you first came on deck.

A. The wind was east-northeast; I couldn't tell the force of it.

Q. At what time did you turn in on that night?

A. I don't recollect; probably about eleven o'clock; that is my usual time.

Q. What part of the schooner's deck was even with the water when you saw her?

A. About midships.

Q. How was her deck at her bow?

193 A. It was considerable ways above water; I should think, say a foot above water.

Q. Did you notice the planksheer forward?

A. No, sir; not particularly; I did not.

Q. Can you swear that any part of the planksheer was carried away?

A. Yes, sir.

Q. Then you did notice it, did you?

A. I noticed it was carried away forward—of course the bow was gone, the planksheer must go.

Re-direct resumed by Mr. HALSEY, respondent's counsel:

Q. State your experience as master mariner; how long on sail vessels, and how long on steamers?

A. About twenty-five years master of sail vessels; fifteen on steamers.

Q. State what lights you saw on the Norwich, and their positions.

A. I saw the light attached to the flag-staff aft, and the side lights, green and red, regulation lights, and her head lights; they were burning brightly.

Q. How wide is the sound at the place of collision?

A. About seven and a half miles?

Q. Was you in such a position as to be enabled to see the schooner's starboard light, if there had been one at the time you saw her about six in the morning.

(Objected to by libellant.)

A. It would depend, sir, upon what mast the light was set on—if it had been on the fore-rigging I could have seen her, and if it had been on the main-rigging, I could not.

J. W. NYE.

James A. Howard's deposition.

I reside in the town of East Lyme, Connecticut. I am wheelsman on the steamer Electra—have been for two years.

Q. How long have you followed the water?

194 A. About twenty-two years.

Q. How long on steamers, and how long on sailboats?

A. Two years on steamer—the Electra—and twenty years on sail vessels.

Q. Was you on the Electra on the night of the 17th and 18th of April last?

A. I was.

Q. Did you see the steamer City of Norwich?

A. I did.

Q. What was her condition when you saw her?

A. She seemed to be laying pretty much still; she was not on fire when I first saw her.

Q. How soon after you first saw her did you discover she was on fire?

A. I should think not more than three or five minutes after I first saw her.

Q. When you first saw the Norwich, how far was she from the Electra, and in what direction?

A. I should think she was about less than a quarter of a mile; pretty hard to tell, it being dark—can't tell exactly how far; I should think she was about southeast from us; we had now passed her.

Q. Did you back up to her?

A. We backed up right abreast of her—abeam of her.

Q. On which side of her did you lie?

A. On her starboard side—off our port.

Q. Where were you standing when the Electra backed down to this position?

A. I was aft, on the saloon deck.

Q. Was you on the look-out in that position, and did you discover any object?

A. I went aft for that purpose, and discovered what I called a schooner.

Q. Whereabouts did she bear from you?

A. I should think about one point off our starboard quarter.

Q. How did you make her out—by her lights or otherwise?

A. I saw no lights at all; I saw her sails.

Q. How was your attention first called to the Norwich?

195 A. By hearing the Electra's whistle blow three times, and at the same time hearing the engine bell strike.

Q. What signal did the bell indicate?

A. Stopping the boat at that time.

Q. Was your watch below or on deck at that time?

A. It was below.

Q. What did you do on hearing these signals?

A. I got out of my berth, came into the pilot-house, and asked the pilot on watch what was the matter.

Q. How soon after you saw the Norwich on fire did she sink?

A. I should think not more than twenty or thirty minutes—the excitement at the time it was hard to tell.

Q. Did you look for the schooner afterwards, and did you find her?

A. We looked for her after rescuing the passengers and crew of the Norwich, and found her at about six o'clock, as near as I can recollect.

Q. Describe the condition of her bow—did you notice it?

A. I did notice it; her jibboom and bowsprit was gone, her rail forward, stanchions were carried away—had the appearance that she had a collision—apparently as striking head on.

Q. What was the condition of her bulwarks each side the stem?

A. The condition was that her bulwarks were gone—stanchion and rails.

Q. About how many feet each side of the stem?

A. I should say, eight feet.

Q. Did you see the schooner's starboard forward rigging?

A. I couldn't say that I did; I didn't notice particular about that.

Q. State whether you saw any light or lights upon the schooner.

A. I did not see any; it was broad daylight at that time.

Q. How soon before this did the captain and crew of the schooner come on board of the Electra?

196 A. I couldn't tell exactly; we started in search immediately after they came on board.

Q. What was the weather when you first came on deck, after hearing the alarm signals you have mentioned?

A. It was dark; I think some cloudy.

Q. What was the weather in the morning, when you found the schooner?

A. It was foggy at that time.

Cross-examined by Mr. HUNTLEY, libellant's counsel:

Q. How was the schooner heading with reference to the Electra, when you first saw her—I mean when you were aft on the Electra?

A. She was head north, nearly at right angles with us.

Q. How far distant was she?

A. It would be pretty difficult to tell how far it was; but it might have been possibly about an eighth of a mile.

Q. How long did you look at her in that position?

A. I should think about one minute.

Q. What did you then do?

A. I walked back to the pilot-house. While walking back my attention was directed to the Norwich.

Q. What was your object in going to the stern of your boat?

A. To see where the schooner was.

Q. Had you any other object?

A. Just to see where she was, that we shouldn't back foul of her.

Q. What part of her did you first see?

A. Her sails; couldn't tell particular which of them.

Q. Did you see the sail on the mizzen?

A. I couldn't say that I did or did not. Can't say either way.

Q. While aft did you see the schooner distinctly?

A. I saw her distinctly enough to see that it was a vessel and a
197 schooner. I saw an object which I knew *that I knew* must be a
sail or vessel of some kind, and it was a vessel with fore-and-aft rig.

Q. Did you attempt at that time to examine her at all?

A. Nothing particular, no more than to see how I thought she was heading—to see if he would go clear of her.

Q. Was she so situated that you would go clear of her?

A. She was.

Q. Under her stern?

A. Yes, sir.

Q. How far distant, that is how much, would you clear her stern?

A. Probably 600 feet, or more.

Q. And at that time, that is, when you first saw her, she was one point off your quarter, was she?

A. I should think she was.

Q. Did you see her fore-rigging.

A. It was pretty dark to see rigging at that distance.

Q. Please state how far you were from the schooner when you first saw her at about six o'clock.

A. I should think about a quarter of a mile; can't say for certain.

Q. Which way were you heading?

A. About northwest.

Q. How was she heading?

A. She was heading just about parallel with us, as we came up alongside of her.

Q. How near did you approach her?

A. I should judge within about 400 feet. I should judge so from the length of our boat.

Q. In what position were you nearest her?

A. We were abeam of her—abreast of her.

Q. In what position were you when you first discovered the condition of the schooner's bow?

A. Our vessel was lying right abreast of her; we were running slow, and stopped our engine before we got abreast of her, so as to stop when we did get abreast of her.

Q. Could you see the condition of the schooner's starboard bow?

198 A. We being so much higher, we could look right down on to
the bow. I was in the pilot-house, and could look down upon it.

Q. State the condition of the starboard bow as you saw it.

A. Well, the rail was gone, the bulwarks, and stanchions.

Q. How far from the stem were they gone?

A. I should think some six or eight feet. I couldn't tell exactly.

Q. Did you see the starboard anchor?

A. I did not notice it.

Q. Did you see the starboard knight-head or cat-head?

A. I couldn't say that I did. I think her knight-heads were gone.

Q. How far were her knight-heads placed from her stem?

A. Well, I don't know. I am not much of a ship carpenter. The knight-heads come up each side of the stem, and the bowsprit goes out between them, and there was nothing there—they were gone.

Q. Did you notice the schooner's head sails?

A. I did not, sir.

Q. Can you state whether they were hanging by the halyards?

A. I should say they were.

Re-direct resumed:

Q. Was there any difference in the condition of the starboard and the port bow of the schooner? If so, state what.

A. I couldn't say as there was; it looked as though there was a pretty square blow.

J. A. HOWARD.

Charles B. Smith's deposition.

I reside at Seekonk, Massachusetts. I am chief engineer of the Electra. I have been an engineer twenty-five years.

199 Q. Were you on board of the Electra on the 17th and 18th of last April?

A. I was, sir.

Q. State if you saw the steamer City of Norwich on that night.

A. I saw her on fire.

Q. What first called your attention to her?

A. By some one in the officers' cabin saying there was a boat on fire—a steamboat. I was in bed at the time.

Q. Did you at once come on deck?

A. I did, sir.

Q. Whereabouts was the fire at that time?

A. All in the centre part of the boat, near the smoke-pipe or engine.

Q. Did you see anything of the schooner at that time?

A. No, sir; I did not.

Q. Was you in either of the boats from the Electra?

A. I was in the second life-boat, the third boat that left the ship.

Q. Where was you when the Norwich sunk?

A. I was not over—I could not tell exactly the distance—from twenty-five to forty feet from her. I was so near her we had to back-water pretty hard, as she rolled her keel up; she rolled to starboard, I am pretty positive. I can't recollect. I will not say positive which way she rolled, but I think now she rolled to starboard.

Q. How extensively was the Norwich on fire, just prior to her sinking?

A. Very near the whole length of her.

Q. What was the weather at the time you first came on deck?

A. Hazy.

Q. When did you first see the schooner?

A. After we had got through picking up passengers, and started forward again.

Q. How far was she from the place where the Norwich sunk?

A. She was from—well, I should think she was a mile—per-
200 haps not quite so far. I didn't take particular notice of the distance we ran.

Q. How near did you approach the schooner, after you found her?

A. Probably not over thirty feet; very close to her.

Q. Did you notice the condition of the schooner's bow on both sides; if so, state what its condition was?

A. I didn't take particular notice of the bow on both sides, but I noticed the bowsprit and stem were gone. I noticed the stem was gone, and was badly bruised up; that was as far as I took particular notice of that part, as the Electra was passing her quick at the time.

Q. Can you state how far from the stem on either side her bows were broken?

A. I could not.

(Objected to by libellants' counsel.)

A. I couldn't say that I did or did not. Can't say either way.

Q. While aft did you see the schooner distinctly?

A. I saw her distinctly enough to see that it was a vessel and a
197 schooner. I saw an object which I knew *that I knew* must be a
sail or vessel of some kind, and it was a vessel with fore-and-aft rig.

Q. Did you attempt at that time to examine her at all?

A. Nothing particular, no more than to see how I thought she was heading—to see if he would go clear of her.

Q. Was she so situated that you would go clear of her?

A. She was.

Q. Under her stern?

A. Yes, sir.

Q. How far distant, that is how much, would you clear her stern?

A. Probably 600 feet, or more.

Q. And at that time, that is, when you first saw her, she was one point off your quarter, was she?

A. I should think she was.

Q. Did you see her fore-rigging.

A. It was pretty dark to see rigging at that distance.

Q. Please state how far you were from the schooner when you first saw her at about six o'clock.

A. I should think about a quarter of a mile; can't say for certain.

Q. Which way were you heading?

A. About northwest.

Q. How was she heading?

A. She was heading just about parallel with us, as we came up alongside of her.

Q. How near did you approach her?

A. I should judge within about 400 feet. I should judge so from the length of our boat.

Q. In what position were you nearest her?

A. We were abeam of her—abreast of her.

Q. In what position were you when you first discovered the condition of the schooner's bow?

A. Our vessel was lying right abreast of her; we were running slow, and stopped our engine before we got abreast of her, so as to stop when we did get abreast of her.

Q. Could you see the condition of the schooner's starboard bow?
198 A. We being so much higher, we could look right down on to
the bow. I was in the pilot-house, and could look down upon it.

Q. State the condition of the starboard bow as you saw it.

A. Well, the rail was gone, the bulwarks, and stanchions.

Q. How far from the stem were they gone?

A. I should think some six or eight feet. I couldn't tell exactly.

Q. Did you see the starboard anchor?

A. I did not notice it.

Q. Did you see the starboard knight-head or cat-head?

A. I couldn't say that I did. I think her knight-heads were gone.

Q. How far were her knight-heads placed from her stem?

A. Well, I don't know. I am not much of a ship carpenter. The knight-heads come up each side of the stem, and the bowsprit goes out between them, and there was nothing there—they were gone.

Q. Did you notice the schooner's head sails?

A. I did not, sir.

Q. Can you state whether they were hanging by the halyards?

A. I should say they were.

Re-direct resumed:

Q. Was there any difference in the condition of the starboard and the port bow of the schooner? If so, state what.

A. I couldn't say as there was; it looked as though there was a pretty square blow.

J. A. HOWARD.

Charles B. Smith's deposition.

I reside at Seekonk, Massachusetts. I am chief engineer of the Electra. I have been an engineer twenty-five years.

199 Q. Were you on board of the Electra on the 17th and 18th of last April?

A. I was, sir.

Q. State if you saw the steamer City of Norwich on that night.

A. I saw her on fire.

Q. What first called your attention to her?

A. By some one in the officers' cabin saying there was a boat on fire—a steamboat. I was in bed at the time.

Q. Did you at once come on deck?

A. I did, sir.

Q. Whereabouts was the fire at that time?

A. All in the centre part of the boat, near the smoke-pipe or engine.

Q. Did you see anything of the schooner at that time?

A. No, sir; I did not.

Q. Was you in either of the boats from the Electra?

A. I was in the second life-boat, the third boat that left the ship.

Q. Where was you when the Norwich sunk?

A. I was not over—I could not tell exactly the distance—from twenty-five to forty feet from her. I was so near her we had to backwater pretty hard, as she rolled her keel up; she rolled to starboard, I am pretty positive. I can't recollect. I will not say positive which way she rolled, but I think now she rolled to starboard.

Q. How extensively was the Norwich on fire, just prior to her sinking?

A. Very near the whole length of her.

Q. What was the weather at the time you first came on deck?

A. Hazy.

Q. When did you first see the schooner?

A. After we had got through picking up passengers, and started forward again.

Q. How far was she from the place where the Norwich sunk?

200 A. She was from—well, I should think she was a mile—perhaps not quite so far. I didn't take particular notice of the distance we ran.

Q. How near did you approach the schooner, after you found her?

A. Probably not over thirty feet; very close to her.

Q. Did you notice the condition of the schooner's bow on both sides; if so, state what its condition was?

A. I didn't take particular notice of the bow on both sides, but I noticed the bowsprit and stem were gone. I noticed the stem was gone, and was badly bruised up; that was as far as I took particular notice of that part, as the Electra was passing her quick at the time.

Q. Can you state how far from the stem on either side her bows were broken?

A. I could not.

(Objected to by libellants' counsel.)

Q. Did you see any light or lights on the schooner?

A. I did not—neither light nor lantern.

Q. When you came on deck, where was the Norwich from you?

A. Not over a quarter of a mile ahead of us—not quite square ahead, but so we could shoot alongside of her.

Q. How did she bear from you at the time you lowered your boats?

A. She was abeam.

Cross-examined by Mr. HUNTLEY, libellants' counsel:

Q. Describe your own position at the time you were within thirty feet of the schooner.

A. I was standing on the upper deck forward, near the pilot-house.

Q. In what direction was the schooner from you when you were within thirty feet of her?

A. She was to the northward of us and off our beam—we passed her.

Q. What were you doing on the upper deck?

A. Looking at the schooner.

201 Q. What was your business on the upper deck?

A. Talking with the passengers.

Q. At what time was this?

A. I think it must have been some past five o'clock—between five and six o'clock. I can't say positive as to the hour.

Q. Were you in conversation with the passengers all the time you were looking at the schooner?

A. No, sir.

Q. What else were you doing?

A. I was doing nothing else.

Q. At the time you passed the schooner, was there any wind?

A. Yes, sir; there was between three and four-knot breeze, I should think.

Q. How much wind was there when you first were in the life-boat?

A. Shouldn't think there was over a four-knot breeze.

Q. At the time you passed the schooner, which way was the wind?

A. I think the wind was to the westward, south'ard and westward, I think; I am not positive.

Q. What was the direction of the wind at the time you were aroused and came on deck?

A. I couldn't say which way it was.

Q. Which way was the wind when the steamer sunk?

A. I think it was to the westward, but I am not positive—I didn't take much notice of the wind.

Q. At the time you passed within thirty feet of the schooner, which way did she head?

A. The schooner?

Q. Yes, sir.

A. Westerly.

Q. Which way did the Electra head?

A. Westerly.

Q. Were the sails of the schooner filled?

A. I couldn't say that they were or were not.

Q. Were her sheets close aft or started?

A. Couldn't tell you, sir.

202 Q. How many sails were set?

A. I didn't notice but one, particular.

Q. What one was that?

A. The foresail.

Q. Was her whole foresail set?

A. No, sir.

Q. How was it?

A. Peak was down.

Q. Did you notice the head sails?

A. I did not.

Q. Did you notice her fore-rigging?

A. Not particular.

Q. Are you familiar with judging of distances?

A. Not by mensuration.

Q. How are you familiar with judging of distances?

A. Well, sir, I don't know as I can answer that question without its by my eye.

Q. Was it broad daylight when you passed within thirty feet of the schooner?

A. It was light enough to distinguish everything about the schooner.

Q. You have made to somebody a statement of this transaction, have you not?

A. I think I have. I gave the reporter of the Herald a history of it.

Q. Have you made a statement to any one else?

A. Yes, sir; I have made quite a number of statements.

Q. Have you made a statement which was taken down in writing, besides the one to the reporter of the Herald?

A. I think I have. I think I gave Mr. Bynner a statement, but I am not positive.

Q. How long were you looking at the stem and bowsprit of the schooner?

A. Might possibly have been a half moment, it couldn't have been more than that—it was a very short time.

Q. Was that all the time you spent in looking at the schooner?

A. It was not.

Q. State any other time.

203 A. I was looking at her from the time we came up to her stern until we went past her.

Q. Do you know the name of the pilot of the Norwich, who was in the wheel-house at the time of the collision?

(Objected to by respondent's counsel.)

A. I have heard the name, but don't know the man, and don't recollect the name.

Q. Do you know the name of any wheelsman then on board the City of Norwich?

A. I do not.

Re-direct resumed:

Q. How was the wind as to force when you was out in the life-boat?

(Objected to as having been already answered.)

A. I should think about four knots.

Q. What is the length of the Electra?

A. I don't know her length—I don't remember her length, I should say—because I have known it by looking on the certificate.

CHARLES B. SMITH.

David Crowley's deposition.

I reside in Brooklyn, New York; I am a steamboat man by employment.

Q. How long have you followed the water?

A. Thirty-four years.

Q. How long in steamers?

A. Thirty-four years.

Q. Was you employed on the steamer Electra in April last, and in what capacity?

A. I was, and in the capacity of mate, or first officer, as they call them.

Q. Did you come on deck on the morning of the eighteenth of April last, and if so, at what hour?

204 A. I did so come on deck—to the best of my belief it was about four o'clock.

Q. What called you to the deck?

A. In consequence of the speed of the boat having been stopped.

Q. Where was your watch at that time?

A. Below, sir.

Q. When you came on deck did you discover any vessel, or steamer?

A. I did discover a steamer.

Q. Whereabouts from the Electra?

A. Bearing off almost abeam, about distant eight hundred feet.

Q. What was her condition?

A. On fire.

Q. How extensively?

A. Very extensively; enshrouded in flames, fore and aft.

Q. How long did the steamer continue afloat after you first saw her?

A. To the best of my knowledge and belief, about twenty-five minutes.

Q. How was the night as to darkness when you first came on deck?

A. It was a hazy, soft morning; soft weather; hazy. It was not dark.

Q. When did you first see the schooner?

A. About six o'clock.

Q. What was the weather at that time?

A. It was soft, hazy atmosphere at that time.

Q. How near did you come to the schooner?

A. I think we could not have been farther off than a quarter of a mile.

Q. What was the condition of her bow?

A. Smashed up—broke, headspars carried away, stays hanging perpendicular up and down the mast.

Q. Did you see or discover any light anywhere on the schooner?

A. I did not, sir.

205 Q. What is the length of the Electra?

A. Two hundred and sixty feet, is what she is called.

Cross-examined by Mr. Huntley:

Q. How do you know the length of the Electra?

A. Only what I have been told—I think by the captain, Nye.

DAVID CROWLEY.

Defense here rest.

REBUTTING PROOF.

Capt. Wm. A. Wright recalled.

By Mr. Huntley:

Q. Have you, since this trial, experimented with Baker's signal oil, as to its power of burning?

A. I have.

Q. Just state what you have done?

A. When I was in New York about a week ago, I went to the ship chandlers to see if I could find a pair of side lights exactly like ours, with lamps of the same capacity. I found a pair of lamps there nearly similar to ours, so I had them sent up with a bottle of Baker's signal oil. Night before last I put some wicks into these lamps and filled them with this oil. I called a man in for the purpose of having him see what time it was when I *lit* them. It was just seven o'clock when I did so. I then hung them out under my grape arbor. I set my alarm clock at four o'clock. The reason of my setting my alarm clock was that I might be aroused at four, in order that I might put one of my lights out at that time so as to have that burning at the same time my lights were burning when the collision occurred. My alarm woke me up at the hour mentioned. I got up, blew the lamp out, and then went back to bed again.

Q. How was it burning then?

206 A. Freely. After breakfast I brought them into New Haven from Fair Haven on the cars, and placed them in the custom-house room here. Just before the court opened I took my last look at them. At ten o'clock, when I went and examined them, the wick of the one I had left burning had begun to scab somewhat. Still, it was a fair, good light, though not as brilliant as the one I had put out at four o'clock. I would not allow these wicks to be touched until just before the adjournment of court last evening. I then (at five o'clock, I think it was) went to them and found that the one I had left burning had just gone out.

(The lamps were here exhibited by the witness.)

These lamps are of the same size as those on our vessel, as near as I can judge. One of these burnt from seven o'clock in the evening to four o'clock in the morning—the same time exactly that our lamps were burning the night of the collision.

Q. How long have you used this signal oil?

A. I have never used anything else in side lights since the law came up—about two years in October.

Q. You state that you have never known them to go out.

A. In all my experience with them I have never known them to go out during the night.

Q. Do you know whether it is an oil in general use?

A. I know it to be an oil in general use, standing higher in New York than any other oil for signal purposes.

Q. Did you see this steamer "City of Norwich," after she was raised?

A. I did. I saw her first in Oyster Bay, just above Lloyd's dock.

Q. Did you examine her there?

A. I examined what I could see of her. Her bow forward was out of water.

Q. Did you examine her bow?

A. Yes, sir.

Q. And afterwards?

A. Yes, sir.

Q. Where?

A. In New York.

207 Q. Describe the appearance of it.

A. Her stem was from the scarf, which was abreast of her lower deck. The chock pieces were split and driven back. The point of the scarf, where it lops forward above the other, fifteen inches below the level of the deck, was gone; and the chock pieces which lopped on to it were split and driven back.

Q. This piece here came from that chock did it?

A. It did.

Q. At what hour was it that the "Electra" passed up to your schooner?

A. When Captain Nye run his boat ahead, after shooting alongside of her, I stepped up to the pilot house and said, "Can you do anything for her?" "No," he says; "she will soon sink." Says I, "What time is it?" He responded, "Just six o'clock."

Q. At that time, how light was it?

A. It was broad daylight and foggy.

Q. When you saw that the steamer was approaching near you, so that collision was imminent, and that she had changed her course, could you at that time have done anything, and if so, what, to have avoided the collision?

A. I could not. Those steamers often pass very near us; but having looked at my weather side light but a few minutes previous after making her, and ascertained that it was burning brilliantly, I did not feel any alarm until she approached very near; and when I saw that collision was imminent, there was nothing that could be done on my part. I walked aft, in order to be handy at the wheel; so that if the boat did sheer soon enough, and there was anything I could do to clear her, to do it. My vessel was long and heavy in the water; there was a light breeze of wind, and the vessel required a great deal of time to be kept off, as she carried her wheel well up on the wind.

Cross-examination by Mr. HALSEY:

Q. How much would your schooner go ahead, with your center board down, supposing you put your helm hard down to bring her into the wind?

208 A. It would depend altogether upon the strength of the wind.

Q. On the course she was going, how much would she go ahead in that direction in coming into the wind; how much would she sweep off that way?

A. That is a hard question to answer. I can answer it better in time than in distance.

Q. Well, how long would it take you to bring her into the wind?

A. She was rather a dull worker, and with that light breeze from the time we put her wheel down until we drew her head sails on the other side, from about two and a half to three minutes. I know I had lit my pipe, gone in, and come out again.

Q. I understand both of those lights you have there were lighted at seven o'clock in the evening?

A. Yes, sir.

Q. And the one you blew out at four, and the other you allowed to burn until it went out itself?

A. Yes, sir.

Q. When did it go out?

A. I do not know; I saw it last at ten o'clock in the morning.

Captain GEORGE F. NYE recalled.

By Mr. HALSEY:

Q. Are you acquainted with this Baker's signal oil that has been spoken of?

A. We used it on the "Electra" until last fall.

Q. For how long a time?

A. For upwards of a year. During the cold weather it was found that our lights would not burn all night.

Q. Why not?

A. Because the oil would get chilled, and the wicks would crust over.

Q. What then was done?

209 A. They were taken out and trimmed along the middle of the night. We were supposed to get the best Baker's signal oil that could be found. After it had been in the lamps a day or two, if they were emptied out, every time they were cleaned, it would have the effect to corrode.

Q. State whether you then abandoned the use of it.

A. Yes, sir; since then we have been using the kerosene, and have no trouble with it.

Q. Is that kind of oil used on all your boats?

A. Yes, sir; so far as I know. I have heard of other boats complain of the same fault.

Cross-examination by Mr. HUNTLEY:

Q. The only trouble you found with this oil was its getting chilled?

A. That is one trouble.

Q. How cold was the weather that chilled it?

A. Various degrees of weather. It was when the weather was a good ways below zero.

210 United States district court, district of Connecticut.

WILLIAM A. WRIGHT *et als.*
vs.
THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.
} Settlement of final decree.—Opinion.

SHIPMAN, Judge:

On the 18th of April, 1866, the schooner S. Van Vliet, owned by the libellants, and the steamboat City of Norwich, owned by the respondents, collided in Long Island Sound. The collision sunk the schooner, and both she and her cargo were lost. The steamboat was greatly damaged by the blow, and soon after took fire and sunk. She had on board a valuable cargo, which was lost. The steamer was subsequently raised, and repaired at great expense.

A libel in personam against the owners of the steamboat was filed in this court, and, after answer and full hearing, she was held in fault, and a decree entered against her owners, with an order of reference to a commissioner to compute the damages to the owners, both of the schooner and her cargo, and report the same to the court. The commissioner heard the parties, and made a special report. Upon motion that the court confirm that report, counsel were heard upon the questions of law raised pertaining to that branch of the case. The report was confirmed upon principles set forth in the opinion of the court, and the damages of the owners of the schooner fixed at $19,975 00, and those of the owners of the cargo at $\$1,921\frac{63}{100}$.

211 Thus far the case presented only the ordinary features of a suit for collision, and was free from all embarrassing questions. If nothing further now appeared the libellants would be entitled to a decree against these respondents for the full amount of the above damages.

At this point, however, the respondents move the court to reserve the final decree, that they may "take appropriate proceedings," and offer evidence to this court, "for the purpose of apportioning the sum for which the owners of the steamboat may be liable amongst the parties entitled thereto." The object of the respondents is to avail themselves of the benefit of the provisions of the act of Congress of March 3d, 1851, limiting the liability of ship-owners for the consequences of the torts of the master and others on board. The respondents insist that they have laid the foundation for this proceeding in their answer, by averring that the damages resulting from this collision to third parties greatly exceed the value of their boat and her freight, then pending.

No formal steps have been taken by way of presenting evidence to this court of the amount of the claims of those whose property was on board of the faulty boat, and injured or destroyed by her taking fire and sinking; but, upon suggestion of the court, and by consent of counsel, such evidence was considered as offered under this motion, and objected to, and the general question of the right of the respondents to relief, and the power of the court to grant it, was argued at length.

The points discussed at bar may be condensed into the following questions:

1. How far the original liability of ship-owners for the faults of their vessels, in cases of collision, is limited by the act of March, 1851?
2. What relief the respondents are entitled to under that act?
3. How far this court can grant such relief as the act intended to provide?

I see no reason to doubt that the liability of owners of vessels
212 for damages done by their own to other craft, in cases of collision,
is limited by this act to the amount and value of their interest in the vessel in fault and her pending freight. The third section of the act is too explicit to be explained away by any comparison of its provisions with the history of British legislation on the same general subject. The direct language of this section coincides with the plain and well-known object of the whole statute, which was to encourage commercial enterprises in the building and sailing of ships, by relieving the owners of any liability for losses beyond the value of their interest in the vessels and freight pending. The argument of the libellant's counsel is that the liability limited by the act, so far as it relates to collision, is confined to damages done to property on board the faulty vessel. In other words, that the sole object of Congress was to relieve the owners whose vessel may be in fault from the unlimited liability to which they would otherwise be held as common carriers. The attempt is made to support this construction by arguments drawn from the history of the various English acts on this subject, and by a comparison of the language of those acts with that of our own. But, as already intimated, I regard this section as too explicit to admit of any such construction. It would not be plainer if the other words were left out, and it read simply, "The liability of the owner or owners of any ship or vessel, * * * for any loss, damage, or injury by collision, * * * without the privity of such owner or owners, shall in no case exceed the amount or value of the interest of such owner or owners, respectively, in such ship or vessel and her freight then pending."

The reasons for limiting the liability for injuries resulting to other vessels and their cargoes are just as weighty as those for limiting it for injuries done to the cargoes of the vessels in fault. Collisions are frequent, their hazards great, and the injuries inflicted upon other vessels and cargoes often far exceed the value of the faulty ship and her pending freight. The disaster out of which this controversy has sprung presents an instructive lesson on this point. Had the libellant's vessel been

condemned as in the wrong, her owners, according to their
213 present argument, would have been liable for the whole amount
of damages done to the City of Norwich and her cargo, exceeding by many times over the amount or value of their interest in the Van Vliet. The owners of the latter would not only have lost their vessel and her pending freight, amounting to over $20,000, but would have been responsible to other parties for probably $100,000 more. It was against just such calamities, out of proportion to the magnitude of the capital invested, that I understand this act to provide. I apprehend that this construction of the third section of this act would never have been doubted but for the singular provisions of the fourth section. But I do not think they seriously affect the question.

This brings us to the consideration of our second point—what relief the respondents are entitled to under this act?

They have alleged in their answer, and now offer to prove, that the injuries resulting from this collision, including not only those these libellants are seeking indemnity for, but also those suffered by owners of property on board the City of Norwich, greatly exceed in amount or value their interest in the latter boat, and her freight then pending. They propose to prove her value and the value of her freight, and the extent of the losses to the owners of the latter, in order to enable the court to apportion the sum for which the owners of the boat are liable amongst the parties entitled thereto—to wit, these libellants and the owners of goods destroyed on the respondent's boat. This they claim they are authorized to do by the fourth section of the act in question, which is as follows:

"If any such embezzlement, loss or destruction, shall be suffered by several freighters or owners of goods, wares or merchandise, or any property whatever, on the same voyage, and the whole value of the vessel and her freight for the voyage shall not be sufficient to make compensation to each of them, they shall receive compensation from the owners of the ship or vessel, in proportion to their respective losses; and for that purpose the said freighters and owners of the property, and the
owner or owners of the ship or vessel, or any of them, may take
214 the appropriate proceedings in any court, for the purpose of
apportioning the sum for which the owner or owners of the ship or vessel may be liable amongst the parties entitled thereto. And it shall be deemed a sufficient compliance with the requirements of this act on the part of such owner or owners, if he or they shall transfer his or their interest in such vessel and freight, for the benefit of such claimants, to a trustee, to be appointed by any court of competent jurisdiction, to act as such trustee for the person or persons who may prove to be entitled thereto; from and after which transfer, all claims and proceedings against the owner or owners shall cease."

It was undoubtedly foreseen by Congress that in cases of embezzlement and kindred torts, and in cases of collision, there would arise instances where several different parties would have claims for damages against the owner of a vessel, exceeding her value in the aggregate, and would very likely endeavor to enforce them in separate suits and in different tribunals; and in order to protect the interests of all parties, it was necessary that there should be some way provided by which the amount to which the liability of the owner is limited should be distributed amongst those entitled to recover, in proportion to their respective claims. This state of things would exist, or at least might exist, whenever property on board either one, or both colliding vessels, belonging to parties other than such owners, was destroyed or injured, and the whole amount of damage should exceed the value of the faulty vessel and her pending freight. Indeed, it might occur where one vessel strikes two others in the same collision, as has more than once happened, and the owners of each injured vessel should bring a separate suit. The language of this fourth section is therefore very broad, and extends the power of taking proceedings for an apportionment to the owner of the faulty vessel, and to the several owners or freighters of any property whatever lost or destroyed by the tortious act of those on board. Wherever, therefore, there are several claimants for damages arising out of the same tortious act, who have brought, or may be entitled to bring, separate suits, the necessity for apportioning the amount for which the owners of the vessel in fault are liable arises. The respondents, in the present suit, find themselves in that condition. 215 In addition to the claims of these libellants, upon which large damages have been awarded against them, they are liable, assuming the judgment of this court as to the cause of the collision to be correct, to freighters or owners of goods on the City of Norwich for a much larger amount; and they aver that the whole sum for which they are thus liable exceeds the value of their interest in their boat and pending freight, at the moment preceding the collision. They are entitled, therefore, to take proceedings to have the amount for which they are liable apportioned amongst the parties entitled thereto. This is one species of relief which the act intended to provide. The other, the transfer of the ship and freight to a trustee, they have not resorted to, and therefore nothing need be said here on that subject. Just here we enter upon the most embarrassing questions which arise under this act. The power given to parties to protect their rights by an apportionment of the sum for which the owners of the vessel are liable is expressed in vague and uncertain terms, both as to the nature of the proceedings to be taken and the court which is to administer them. We are therefore brought to the consideration of our last question: How far this court can grant the relief which this act intended to provide.

The language of the act is that the parties authorized, or any one of them, "may take the appropriate proceedings in any court for the purpose of apportioning the sum," &c. What is here meant by "appropriate proceedings?" It is reasonable to suppose that Congress, by this language, referred to some course of legal proceedure, already known to the law, and administered by some distinct tribunals according to a settled practice. As this act was framed with full knowledge of the various English acts relating to the same subject, and was intended to accomplish substantially the same result, we may infer that the appropriate proceedings contemplated were substantially such as had been employed in the enforcement of the English act. These were equity proceedings, administered by the high court of chancery. That tribunal was empowered to entertain suits of this character, and to draw 216 the whole controversy within its jurisdiction by stopping actions in all other courts relating to the same subject-matter. The most ample powers were conferred on that court to enable it to make a complete, effectual, and final disposition of the litigation so as to bind all parties in interest. These powers were transferred to the high court of admiralty in 1861. (See Judge Benedict's opinion in the case of the steamboat City of Norwich *vs.* Place.) Some such powers as those exercised by the English courts must be possessed and employed by whatever tribunal effectually administers this act of Congress. It must be able, by a binding decree, to settle the whole controversy, and conclude the parties in interest. Now, our present enquiry is, whether this court possesses powers commensurate with such a task. Waiving now the question whether, if it had the power at all, it could proceed to exercise it in connection with, and as a part of, the present suit, I pass to the enquiry whether it can do so under any form of proceedings, unless its jurisdiction is first enlarged?

It is true that this section says that the parties, or any of them, "may take the appropriate proceedings in any court for the purpose of apportioning," &c. Of course these words, "any court," are not to be taken in their literal sense. From necessity we must restrict and qualify them at the start. A court whose jurisdiction is exclusively criminal cannot be deemed within their meaning. No one will doubt that civil, as distinguished from criminal tribunals, alone were indicated. Nor can we suppose for a moment that it was intended by this act to authorize a resort to all civil courts. Tribunals of limited and inferior jurisdiction, like probate, surrogate, or local city courts, are not within the meaning of these words, although within their literal expression. They undoubtedly refer, as the latter clause of this section, when providing for the transfer of the vessel to a trustee designates—to courts of competent jurisdiction—tribunals having a range of authority and a mode of procedure adequate, or at least adapted, to accomplish the purposes the act had in view. Now the only courts of a character at all resembling this description are courts possessing a general equity jurisdiction.
217 Whether even such courts, as constituted in this country, are, without the aid of special legislation, adequate to this task, I do not now stop to inquire. Nor do I pause at the question whether the equitable jurisdiction of any other court of the United States, as the law now stands, is equal to the work. It is sufficient for me here to determine whether this court has any such power. I answer unhesitatingly that it has not. It does not pertain to its jurisdiction in admirality; certainly not in a suit *in personam*, where neither the faulty ship and freight, nor their amount or value, are within the control of the court. In a suit *in personam* it can render no judgment that would bind parties not before it. None of these freighters are parties to this suit, and it is doubtful if this court has the power to make them parties. Certainly it has no power to make parties of such as reside and remain beyond the limits of this district.

It is hardly necessary to add that this court has no equity powers adequate to the exercise of the duty supposed to be conferred upon some court by this section of the act. Its jurisdiction depends upon the acts of Congress, and with the exception of a single subject-matter, no equity jurisdiction has ever been conferred upon it. I presume it will hardly be contended that, because Congress has authorized, in terms, appropriate proceedings to be taken in any court, it has by implication conferred upon every court powers adequate to the work of effectually administering this act. And if it has not, this court is without jurisdiction, without rules of practice, and without the power to make such rules, adapted to accomplish the object of the statute and give effectual relief to the parties interested in the sum for which these respondents are liable as damages for this collision.

The conclusion is, that the court has no power to grant the relief asked for on this motion, or under any form of proceeding that could be instituted. The evidence offered is therefore rejected and the motion denied. And as it is conceded that the value of the City of Norwich and her pending freight at the time of the collision were much greater than the damages assessed in this case, a decree must be entered for the libellants for the sums fixed by the court on confirming the commissioner's report.

218 District court of the United States for the district of Connecticut, in admiralty.

William A. Wright, Samuel Hemmingway, William Betsworth, William A. Robertson, Albert V. Eldridge, Horatio Nichols, Robert Travers, and James A. Van Brunt, and Henry Haight, copartners under the company name of Van Brunt & Haight, and of Dan Smith, and also of Jesse Ludington, John B. Ludington, and Jesse C. Ludington, copartners under the company name of J. Ludington and Company, versus the Norwich and New York Transportation Company, after the hearing of said cause upon the libel, answer, and proofs heard and exhibited on the trial; his honor, the judge of said court, having on the 23rd day of April, A. D. 1867, made a decree adjudging that the libellants recover of the claimants the sum of nineteen thousand nine hundred and seventy-five dollars—

Now, therefore, the said respondents move an appeal from said decree, and pray that the same may be allowed, and that by virtue thereof the said cause may be appealed to the next circuit court of the United States to be holden at New Haven, in & for said district, on the 4th Tuesday of April, A. D. 1867, and they offer to enter into any stipulation, and give any securities ordered by the court, and otherwise to abide by the order of the court; the said appellants claiming that said decree is erroneous, and that said libel ought to have been dismissed, and the prayer thereof denied; and also that if any decree should be made against the respondents, it should not be for the whole amount of damages as assessed in said decree, but only for such proportion thereof; that the amount recovered by said libellants added to the amounts recovered by other claimants, for damages arising out of the same cause of action, should not in the whole exceed the amount or value of the interest of said respondents in said steamer, the City of Norwich, at the time said cause of action accrued and her freight then pending. And on said appeal the said respondents intend and desire that said cause may be heard anew in said circuit court by examination of the witnesses before examined and otherwise, as by the rules of the court are allowed in such cases. 219

JOHN S. BEACH,
Proctor for Respondents.

I, Loren P. Waldo, clerk of the district court of the United States, within and for the district of Connecticut, do certify that the within and foregoing is a true copy of the original process, proceedings, evidence, decree, and appeal in the within entitled case on file in this court.

In testimony whereof, I have set hereto my hand and the seal of said court at Hartford in said district, this 25th day of April, A. D. 1870.

[L. S.] Attest: LOREN P. WALDO,
Clerk of District Court for said District.

220 At a circuit court of the United States appointed by law to be held, and held at Hartford, within and for the second circuit and district of Connecticut on the third Tuesday, to wit, the 20th day of September, A. D. 1870.

Present: Hon. Lewis B. Woodruff, circuit judge.

William A. Wright *et als.*
vs.
The Norwich and New York Transportation Company.
} Appeal from the district court.

Be it remembered that at the said term of court the following decree was passed, and ordered to be entered of record, viz:

Circuit court of the United States, district of Connecticut, *ss.*—In admiralty.

WILLIAM A. WRIGHT *et als.*
vs.
THE NORWICH AND NEW YORK TRANSPORTATION COMPANY. } September term, 1870.

This cause having been heard in this court on the pleadings and proofs, and having been argued by the advocates for the respective parties and due deliberation being had, it is now, at this term of the
221 circuit court of the United States, holden at Hartford, within and for the district of Connecticut, on the third Tuesday of September, 1870, to wit, on this 20th day of said September, ordered, adjudged, and decreed, that the decree rendered in the district court of the United States in this cause and appealed from to this court, be in all things affirmed with costs, and that the said appellees have execution for the sums decreed to be paid to them respectively by said decree, and the stipulators cause their stipulations to be fulfilled.

L. B. WOODRUFF,
Circuit Judge.

Whereupon, on the same day in open court, the claimants, the said Norwich and New York Transportation Company, filed in court their appeal, and bond upon appeal, in the words and figures following, to wit:

United States circuit court, district of Connecticut, September term, A. D. 1870.

WILLIAM A. WRIGHT *et al.*, libellants,
vs.
THE NORWICH & NEW YORK TRANSPORTATION COMPANY, respondents. } In admiralty.

222 The above-named respondent conceiving itself aggrieved by the final sentence or decree entered on the 20th day of September, A. D. 1870, in the above entitled cause, doth hereby appeal therefrom to the Supreme Court of the United States, and prays that its said appeal may be allowed, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the said Supreme Court, at the term thereof to be held at Washington on the first Monday in December next.

The Norwich & New York Transportation Company,
By J. HALSEY, *Proctor.*

United States circuit court, district of Connecticut, September term, 1870.

WILLIAM A. WRIGHT, *et al.*, appellees,
vs.
THE NORWICH AND NEW YORK TRANSPORTATION COMPANY, appellants. }

Know all men by these presents, that the Norwich and New York
223 Transportation Company, a corporation duly established under the laws of the State of Connecticut, and having its office and

principal place of business at Norwich, in said State, and David Smith and Julius Webb, both of said Norwich, are held and firmly bound unto the above William A. Wright, Samuel Hemmingway, William Betsworth, William A. Robertson, Albert V. Eldridge, Horatio Nichols, Robert Francis, James A. Van Brunt, and Henry Haight, partners under the name of Van Brunt & Haight; Dan Smith and Jesse Ludington, John B. Ludington and Jesse C. Ludington, partners under the name of J. Ludington & Co., in the sum of thirty-five thousand dollars, to be paid to the said appellees; for the payment of which well and truly to be made, the said Norwich & New York Transportation Company binds itself and its successors, and the said David Smith and Julius Webb, themselves and their respective heirs, executors, and administrators, jointly and severally, firmly by these presents.

In witness whereof, the said Norwich and New York Transportation Company has caused these presents to be signed and sealed by Alba F. Smith, duly authorized, and the said David Smith and Julius
224 Webb have hereunto set their hands and seals this 26th day of September, A. D. 1870.

Whereas the above-named appellant has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, to reverse the decree rendered in the above cause by the circuit court of the United States for the district of Connecticut:

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute its appeal to effect and answer all damages and costs if it fail to make its appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

The Norwich & New York Transportation Company,
[CORPORATION SEAL.] By A. G. SMITH, *President.*
DAVID SMITH. [L. S.]
JULIUS WEBB. [L. S.]

Witness: H. L. PARKER.

Taken and acknowledged before me this 26th day of September, A. D. 1870, at Norwich, in the district of Connecticut.

JAMES A. HOVEY,
U. S. Commissioner.

UNITED STATES OF AMERICA,
District of Connecticut, ss:

On this 27th day of September, A. D. 1870, at the city of Norwich, in said district, personally appeared the above-named David Smith and
225 Julius Webb, and made oath that they are respectively worth the sum of thirty-five thousand dollars after the payment of their just debts.

DAVID SMITH.
JULIUS WEBB.

Subscribed and sworn to before me.

JAMES A. HOVEY,
U. S. Commissioner.

Approved:

WM. D. SHIPMAN,
Dist. Judge.

Whereupon the said appeal was allowed to the Supreme Court of the United States, and thereafter, to wit, on the 6th day of October, A. D.

1870, the said Norwich and New York Transportation Company filed in said court their petition of appeal, in the words and figures following, to wit:

Supreme Court.

THE NORWICH AND NEW YORK TRANSPORTATION Company, appellant,
vs.
WILLIAM A. WRIGHT ET AL., appellees.

226 To the honorable the Supreme Court of the United States:

The appeal of the above-named Norwich and New York Transportation Company respectfully shews, that on the 9th day of May, 1866, the above named William A. Wright and said other appellees filed their libel in the district court of the United States for the district of Connecticut, against this appellant, in a certain cause civil and mar*a*time, for the recovery of damages alleged to have been sustained by them to the schooner General S. Van Vliet and her cargo, by collision with the steamboat City of Norwich on Long Island Sound, and that process issued upon such libel was duly served upon the petitioner, and thereupon the petitioner filed its answer to said libel, & such proceedings were had in said cause, that on the 23rd day of April, A. D. 1867, a final decree was made and pronounced therein by said district court wherein it was in substance adjudged that the said libellants who were owners of said schooner recover against the petitioner the sum of nineteen thousand nine hundred and seventy-five dollars, and the said libellants who were owners of said cargo, the sum of one thousand nine hundred and
227 twenty-one dollars and sixty-three cents, together with costs.

And that prior to the passing of said final decree, and after the value of said schooner and cargo had been ascertained and fixed by said district court, the petitioner filed a motion which was allowed and entertained by said court, therein shewing that the said steamboat City of Norwich, belonging to the petitioner, at the time of said collision had on board a large and valuable cargo of merchandise on freight, belonging to various parties, and much larger in amount than the whole amount of the value of the interest of the petitioner in said steamboat and her freight then pending, and alleging that the damages sustained by all of said parties by said collision, including the libellants, was much greater in amount than the value of the interest of the petitioner in said steamboat and her freight then pending, and praying that they might be permitted to shew by proper evidence the whole amount of damages sustained by all of said parties, and the value of said steamboat and her freight then pending, and that the decree of said
228 court be so framed as to give to said libellants such part or proportion of the amounts of damages sustained by them as the said value of the said interest of the petitioner bore to the whole amount of damages sustained by all parties by said collision, which motion or prayer the said district court denied, and gave said final decree in favor of said libellants for the full amount of their said damages, without any regard to the value of the petitioner's interest in said steamboat and her freight, or to the amount of loss sustained by other parties by said collision.

And that after said final decree your petitioner duly appealed therefrom to the circuit court of the United States for the district of Connecticut, and the said canse was removed thereby into the said circuit court and there tried anew upon the same pleadings and proofs, and

such proceedings were had in the said circuit court, that afterward, to wit, on the 20th day of September, A. D. 1870, the said circuit court made a final decree in the said cause, whereby it was decreed that the said decree of the said district court be in all things affirmed with costs, and that the said appellees have execution, which said decree of
229 said circuit court is, as this appellant is advised, erroneous and ought to be recovered, and that said libel ought to have been dismissed and the prayer thereof denied.

And also that if any decree should be made against the petitioners, it should not be for the whole amount of damages awarded in said decree, but only such part and proportion thereof as the value of the interest of the petitioner in said steamboat and her freight then pending bears to the whole amount of damages sustained by all persons by said collision.

Wherefore this appellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the said decree of said circuit court and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear said cause anew, and that the said decree of the said circuit court and
230 every part thereof may be reversed and a decree made dismissing said libel with costs, or such other decree made as to the Supreme Court shall seem just and equitable.

The Norwich & New York Transportation Co.,
By JULIUS WEBB, *Agent.*

J. HALSEY,
Proctor for Appellant.

Attest:

LOREN P. WALDO, *Clerk.*

(Indorsement on cover:) No. 287. The Norwich and New York Transportation Company, appellants, *vs.* William A. Wright et al. Connecticut C. C. U. S. Filed 12th November, 1870.

SUPREME COURT

OF THE

UNITED STATES.

THE NORWICH & NEW YORK TRANSPORTATION CO.,
Appellants.

VS.

WILLIAM A. WRIGHT, *et al.*

ABSTRACT AND POINTS
FOR THE APPELLANTS.

E. H. OWEN,
J. HALSEY,
Counsel for Appellants.

NORWICH:
PRINTED BY THE NORWICH PRINTING CO.
1871.

SUPREME COURT

OF THE

UNITED STATES.

THE NORWICH & NEW YORK TRANSPORTATION CO.
Appellants:
vs.
WILLIAM A. WRIGHT & others.

This is an appeal from a decree of the Circuit Court for the District of Connecticut, in a case of collision, whereby the appellants as owners of the steamboat City of Norwich, were condemned to pay for the loss of the schooner General S. Van Vleet and cargo.

ABSTRACT OF THE PLEADINGS.

The libel is *in personam*, and after stating that the libellants were owners of the schooner and her cargo, and that the appellants were owners of the steamboat, it avers (*2d Art.*) that on the 10th of April, 1866, the schooner being of the burthen of 185 tons, set sail from Nantycoke river, with a cargo of 900 bushels of oysters, bound for New Haven: that on the 17th she passed Sandy Hook and was towed through Hurl Gate in the forenoon, and commenced to beat down the Sound: that at evening on that day her lights were set in the fore-rigging as required by law, which remained burning brightly until after the collision: that the wind was *N. E. by E.*

with light breezes: (3 *Art.*) that at 3.30 A.M. of the 18th, the schooner was put on her starboard tack heading about North, Eaton's Neck bearing *E. by S.* seven miles distant, wind light, weather clear, going three knots an hour: that just before "staying," lights were observed to the Eastward, between Norwalk and Eaton's Neck, which proved to be from the steamboat City of Norwich, which was steering westward and in the direction of the schooner: that the master of the schooner, one man at the wheel, and a lookout forward, were on deck: that the schooner was kept on her course by the wind and her lights were burning brightly: that when the steamboat came within half her length, her engine bell was rung and she sheered to the West Northerly, and struck the schooner on her starboard side between the cat-head and knight-heads, staving in the weather bow: (*Art.* 4) that efforts were made to stop the leak and to work in shore, but at 5.50 finding it unsafe to remain on board she was abandoned and all hands went on board of the steambort Electra: that the schooner with her cargo sunk in 15 fathoms of water: that the collision was caused by carelessness of the steamboat, and that the libellants' damages in all amonnt to $30,000. The libel was sworn to by Wm. A. Wright, master, 9th May, 1866. (*fols* 6—10.)

The appellants having filed exceptions to the libel (*fols.* 10—12) the same was thereupon amended to meet the exceptions by stating that the schooner had a red and green light, and how and where they were placed: that the schooner had been about 10 minutes on her starboard tack when the lights which before had been seen proved to be the head and side lights of the steamboat: (*fol.* 13) that the schooner was kept on heading *N. a little Easterly*, with the wind from *N. E. by E.* and if the steamboat had kept a proper lookout she could have seen and avoided the schooner &c. &c. (*fols* 12—16.)

The answer (*Art.* 2*d*) states, that the several matters in the 2d, 3d, 4th and 5th Articles of the libel, are "in great part falsely alleged" and that the truth is as therein after stated. The answer then states that the steamboat sailed from Norwich on the afternoon of April 17, 1866, at 2 o'clock, on one of her regular trips to New York, and at about 9.30 P. M. she departed from New London, having on board a valuable freight belonging to various parties much larger in value than the whole amount of the interest of the appellants in the steamer and freight pending, and also passengers: that her lights were all properly set and were burning brightly throughout the night: that from 2.15 A. M. of the 18th until the schooner was discovered, the steamer was heading *W. by S.* the wind *N. E. by E.* blowing a four or five knot breeze. The night was dark, hazy, with a low mist and occasional bunches of fog on the water: the steamer was going 10 knots, and at 3.35 the lookout and pilot at the same instant discovered the schooner about three or four points off the steamer's port bow heading about North, and distant about 3 or 4 times the length of the steamboat: that no lights were visible upon her, and she was discovered by the head of her sails and gaffs being lit up by the steamboat's lights: that although lights could be seen a mile or so, yet a vessel without lights could only be seen a short distance, and while the lookout and all were watchful and attentive, yet no lights were or could be seen on the schooner, and she was therefore not discovered until it was too late to avoid her: that upon discovering her the engine was immediately stopped and reversed,and the wheel hove hard to port, whereby the course of the steamboat was changed a little northerly and the schooner ran stem on into the steamboat, striking her on the port side under the guard about 60 feet from the stem, and crushing a hole into her hull. In a short time it was discovered that the steamboat was filling, and soon after she took fire, from the rising of the water to her furnaces, and became speedily enveloped in flames, and soon sunk with a loss of all her freight and several lives: that there was no negligence on the part of the steamboat, but there was on the part of the schooner, for she had no lights properly trimmed and burning which could be seen any distance, and was not seen by the lookout until she came within the influence of and was discovered by the lights from the steamboat as before stated: that under the circumstances the schooner's wheel could and should have been put down and she brought into the wind, and so avoided the collision. (*fols.* 16—20.)

The following facts are undisputed, viz: The collision occurred at about 4 o'clock A. M. of the 18th of April, 1866, on Long Island Sound somewhere off, or to the westward of Stamford. The wind was about *E. N. E.* and blowing a three or four knot breeze. The night before and at the time of collision, and afterwards, was dark and cloudy, but vessels' lights when properly trimmed and burning could be and were seen from one and a half to two miles. The schooner was bound to Fair Haven and was heading about *N.* and going at the rate of three or four knots, and the steamboat was bound to New York heading *W. by S.* and going, before the collision, at the rate of 12 miles an hour. She had a man properly stationed forward whose sole duty was to lookout and report vessels. She also had a competent pilot, who stood in the pilot house, and was also looking out for lights, and one man at the wheel, but the schooner was not discovered by any one on board the steamboat until they were within three or four hundred feet of her, when she was discovered by the steamboat's lights which shone upon and reflected her sails, heading towards the steamboat, bearing three or four points off her port bow. That the engine was thereupon immediately stopped and reversed, and the wheel hove hard a port, but before anything could be done to avoid it, the schooner came into and struck the port side of the steamboat, stem on, and about fifty feet abaft the stem, making a large hole through which the water flowed, and which reaching the furnaces, caused the fire to flame out, so that in a few minutes the whole boat was on fire, and the result was that both vessels sunk.

No question was made in the courts below in regard to the acts of those on the steamboat after the schooner was discovered, nor but that everything was done which could have been at that late moment to avoid the collision, but the question turned upon their negligence in not discovering the schooner sooner. It was and is claimed on the part of the schooner, that her green light, which was the one towards and open to the view of the steamboat, was burning brightly, while it was and is now insisted on the part of the steamboat that it was not, and that it was the insufficiency and dimness of that light which prevented the schooner from being sooner discovered, and that the fault therefore was on the part of the schooner.

The District Judge in his opinion says: "It is obvious that the whole case must turn on the question whether or not the schooner had an adequate green or starboard light which those in charge of the Norwich might and ought to have discovered in time to avoid her. On that point I think that the clear preponderance of the evidence is with the schooner, at the same time admitting that the burden of proof is on her." His Honor the Circuit Judge, in his opinion, when the case came before him on appeal says: "In the testimony of the various witnesses examined on behalf of the respective parties there is very much in support of either view of the question. But after a most painstaking study of the proof, aided by the oral argument and by the elaborate written and printed briefs of the counsel, I am constrained to say that the preponderance of the evidence is with the libellants upon this question. In a case of great doubt, if I were inclined to a conclusion upon a mere question of fact at variance with the Court below, I should hesitate in reversing where the witnesses were examined in the presence of the Court. Here, however, while it must be conceded that the proof on both sides presents a serious conflict, the final conclusion from which I cannot escape is in concurrence with that of the District Court Judge."

The interlocutory decree of the District Court appears at *fol.* 21, under which proceedings were had before the commissioner who reported the value of the schooner, and thereupon, and before a final decree was entered, the question having been reserved by the District Judge, the appellants by consent, filed a motion praying that the entry of a final decree on such report might be reserved, and that they might be permitted to show by competent evidence the aggregate amount of all the claims arising out of the collision and fire, and the value of the steamboat and her freight pending at the time of the disaster, and that the libellants should not be entitled to recover more than their jnst proportion of the value of the steamboat and her freight. This application was denied and a final decree entered for the full amount reported by the commissioner, (*fols.* 22—26.) In deciding this motion Judge Shipman held in effect that while the act of 1851, which limits the liability of ship owners in certain cases, to the value of the vessel and freight pending, applied to this case, yet the court had no power under that act, nor any original jurisdiction, to accept such testimony and make such apportionment, and he therefore denied the motion. 9 *Stat.* 635, *opinion.* (*fol.* 210.)

On appeal to the Circuit, the decree of the District Court was affirmed, (*fols.* 220—221) but the Circuit Judge did not concur with the District Judge in regard to the construction of that statute. The Circuit Judge held that the act did not apply to, or affect the claims of the owners of the schooner, the opposite colliding vessel and her cargo, that it applied only to the claims of freighters of the steamboat, who could only recover a just proportion of the value of the steamboat and of the freight pending at the time of the disaster. He however held that if the act did apply to the schooner, then the testimony offered should have been received and the decree for the libellants modified accordingly. (*See his opinion herewith handed to the court.*)

It is now respectfully insisted that there was error in holding, (1) that the schooner's green light was sufficient, and that the collision arose from faults on the part of the steamboat, and, (2) in the construction of the above statute in so far as it is held that the act does not include the claims of the owners of the schooner and her cargo.

POINTS.

FIRST.

There was error in holding that the schooner's green light was sufficient, and that she was not in fault. Although this court regards the concurrence of the opinions of the Courts below on a question of fact, as presumptive evidence of their correctness; yet such concurrence is not conclusive and does not estop the appellants from raising the question in this Court. It is true it casts the burden on the appellants of showing error. (*The Quickstep*, 9 *Wall.* 665; *The Baltimore*, 8 *Wall.* 382.)

I

The statutory rules of navigation impose upon steamers and sailing vessels correlative duties. While it is the duty of the steamer to keep out of the way of a sailing vessel, it is the duty of the latter not only to keep her course, but also to carry signal lights in the same way and of the same power as prescribed for steamers, which are to be "of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles."

The mere fact therefore that the steamboat and schooner collided does not in and of itself show that the steamboat was in fault so as to cast the burden of proof on her, but before this can be done it must appear from competent testimony that the schooner was not in fault. The want of care in navigating vessels, "is never to be presumed, but is required to be clearly proved." (*Waring vs. Clark*, 5 *How.* 501; *The John Fraser*, 21 *How.* 184. 194; *The Neptune Alc. R.* 483. 493, 13 *Stat. p.* 59. *Art.* 3. 5.)

II.

The testimony shows that the schooner was in fault in that she did not have a sufficient green light. The law required her to have had as good a light as the steamboat; one that could then and there have been seen by those on approaching steamboats as far as their lights could be seen from her, which the testimony shows she had not.

1. How far then could a vessel's lights, properly trimmed and burning have been then and there seen by approaching vessels? The averment in the libel is that the steamboat's lights were seen by those who were navigating the schooner 2½ miles (*Art.* 3, *fol.* 13) which is conclusive upon the question how far the schooner's lights should have been seen; moreover the testimony is to the same effect. Thus *Capt. Wright*, the master of the schooner says, (*fol.* 49, 50) he saw the steamboat's port light (that was the light towards him) *two miles off.*

Daniel Patience, who was at the schooner's wheel says, (*fol.* 61) he saw the steamboat's lights 10 minutes before the collision, (This at the speed she was going would place her distant about two miles.)

George Mullenhoff, the lookout on the schooner says, (*fol.* 69, 83) he saw the steamboat's lights five minutes before the collision. (This would place her distant a mile or more.)

Henry Tracy, the pilot of the steamboat says. (*fol.* 115) that a vessel's lights could have been seen from a mile and a half to two miles.

George F. Nye, the pilot of the Electra, which was running in the same direction, but astern of the steamboat, on being asked how far he could see a vessel or steamer's lights properly trimmed and burning, says, (*fol.* 147) "I should think two miles."

John H. Nickerson, the wheelsman of the Electra says, (*fol.* 157) if the schooner's lights had been burning brightly they could have been seen a *mile and a half* at that time.

Isaac Gilford, the look-out on the Electra, says, (*fol.* 160.) that at that time a vessel's lights could have been seen *a mile and a half or two miles.*

It is therefore submitted and insisted, that the averment of the libel, and the testimony establishes the fact, that vessel's lights properly trimmed and burning could have been seen from 1½ to 2 miles, and therefore if the schooner's green light had been such as the law required, it could and should have been seen then and there by approaching vessels at least that distance.

2 But her green light was defective, for it was not then and there seen, and could not have been seen, that distance, nor in fact over a few hundred feet. The burden resting upon the schooner to show that she had a proper and sufficient light, testimony of three different classes of witnesses was produced on her behalf, viz: (1) her own officers and crew; (2) two persons who were on the steamboat Elm City and (3) two who were on the schooner Chieftain. The testimony of these witnesses is substantially as follows;

Wm A. Wright, the master of the schooner says, (*fol.* 41) that when he saw the steamboat's light he went forward, stepped upon the rail and looked at his green light, which was ten or twelve feet above the rail, and found it burning brightly. He further says, (*fol.* 45) that a few minutes after the collision he told his men to look at it, that he then went forward, stepped into the starboard fore-rigging and saw that it was burning brightly, and at (*fol.* 48) he says that on taking a last look just before leaving the deck he saw them still burning clearly.

This is all of his testimony upon this subject. Now taking the position of this light, which he says was twelve feet above the rail, it seems to have been impossible for him to see it by stepping upon the rail or otherwise, except by going up into the starboard fore-rigging, as he says he did on one occasion. So that there was really but one occasion when he saw or even could have seen the light. But his testimony upon other points is so paplably erroneous that he is not entitled to full credit upon this subject; for example, he states with great positiveness, thal before the collision and when the steamboat was "something less than a half a mile off" the schooner was so far ahead or in front of the steamboat, that he could see both her red and green lights, (*fol.* 50) and still he says that the stem of the steamboat struck the schooner "in her knight heads and heel of bowsprit," (*fol.* 42. 52, 53) whereas she did not so strike nor was she ever so far ahead as that he could see both lights, and so the Court below in effect decided. If the schooner had been so far ahead as he pretends she would have passed the steamboat's bows, and the latter would have gone under her stern in safety. The testimony of this witness should be carefully scrutinized before giving credit to his statement about his light.

Daniel Patience, who was from 12 until 2 o'clock on the lookout, and after that, until, and at the time of the collision, at the wheel of the schooner, says (*fol.* 60) that a little after the collision the capiain said, "boys, you all go and look and see if your lights are burning plainly," and that he then saw the green light burning plain. This is all he says upon the subject. He don't state where he was or how he looked when he so saw that light. As it was arranged and placed he could not see it from the deck, and he don't pretend to have gone up into the fore-rigging to see it, nor even to have stepped upon the rail. It is true he was not cross-examined on this point, but notwithstanding this, can the court *presume* that he was in a position to see the green light at that time. He also was in an error as to the manner the vessels came together.

Peter Farn, another person from the schooner, who was below and asleep at the time of the collision, says: (*fol.* 68) the lights were ten or twelve feet above the rail, and that as he came on deck he noticed the starboard light and it was burning brightly; can't say that he looked at it afterwards, not even when he left the vessel; but on cross examination he says (*fol.* 69) it burned until they left, that when they were getting into the boat, between 5 and 6 o'clock A. M. he noticed the starboard light and that it was burning so brightly that he supposed it could be seen eight or ten miles, (*fol.* 73. 74.) This is too much to believe; nor is his testimony on his direct examination entitled to credit. He could not have seen the starboard light as he came on deck, nor without special efforts to do so, which he did not make.

George Mullenhoff, was on the schooner on lookout and stood by the fore-rigging and traveller. (*fol.* 76.) He says, (*fol.* 79) that the lights were fourteen feet above the rail; that after the collision he noticed the lights and that they were "burning as good as they ought to be, as well as they ever were," but he don't pretend to say how well they ought to have burned. His standard of goodness may have been,and no doubt was, far below what the law required. His testimony is not worthy of credit. He certainly could not have seen the starboard light from where he stood.

Harry Rodick, who was below asleep when the collision occurred, says, (*fol.* 86. 87) that when he came on deck he went to the pumps awhile; then he went forward to go into the forecastle, and that when he was on the starboard side of the forecastle door he saw the green light, and that "it was burning very bright." He says, (*fol.* 89) on cross examination, that the Captain did not ask him to look at the lights. This is all he says upon the subject, and it is insisted that his testimony is of no weight, for it is certain, and a moment's reflection will confirm it, that he could not have seen the starboard light when going into the forecastle.

Gustavus Peters, (colored man) who was also below asleep, upon being aroused and coming on deck, he says (*fols.* 90, 91, 93) he ran aloft in the mizzen rigging, then he went down and ran forward and "noticed the schooner's lights; they were burning as well as they were when put up," but on cross-examination he says (*fol.* 93) that when he saw the green light he was standing forward by the windlass so that he could touch it with his knees. He says (*fol.* 94) that the captain selected him to look at the lights, but (*fol.* 98) he says, "I did not go aloft to look at it, because I saw it was burning." He might perhaps have seen the glimmer of the light, but without going into the fore-rigging he could not have seen the light so as to speak of its goodness. His whole story is improbable.

Moses F. Wright, the mate of the schooner, says (*fol.* 103) he was below asleep, that when called he went on deck, made a rush for the rigging, then went to get the boat down, and after that he went to look at the lights: that he got upon the rail on the starboard side, and saw the green light burning brightly, and on cross-examination he says (*fol*, 106) he "stepped upon the rail" just *aft* the fore-rigging when he saw the light. This was impossible. The light was placed in a box fastened to the fore-rigging, 10 or 12 feet above the rail, which had an inboard, bottom board and back board, (*fol.* 38) and therefore could not have been seen from where he said he stood, aft the fore-rigging. This witness says (*fol.* 109) that when the steamboat was on fire from stem to stern, it did not "make a very bright light."

Rufus E Hine, who was on the schooner Chieftain, bound down the Sound, being several miles ahead of the schooner, says (*fol.* 99) he had seen her during the night when she was on her port tack, standing to the southward and eastward, (*fol.* 102) and that he saw her starboard light for the last time, 25 minutes before the fire broke out, three miles distant. According to this witness' statement he did not see, and could not have seen, the green light, for about half an hour before the collision, for Capt. Wright says, (*fol.* 40.) that he went about on his starboard tack standing to the northward and westward the last time at 3.30, during which time the witness says he could not see that light. Lamps frequently grow dim suddenly.

William R. Merrihugh, the master of the Chieftain, (*fol.* 110.) was not on deck from 12 o'clock until 4 o'clock, after the fire broke out; all he can say is in regard to the schooner's lights before 12 o'clock, but for four hours previous to the collision he was asleep or below, and knew nothing about them.

John E. Bowns, who was the pilot of the steamboat Elm City, which left New Haven at 2,05 A. M. bound for New York, says, (*fol.* 27. 28.) he passed the schooner ten minutes before 5 A. M. which was after the collision, that he *first discovered her by her light when only about four lengths off.* He however says that he then saw her green light burning brightly; that it was ten minutes before 5 o'clock A. M.; that it was dark, not quite daylight, but vessels' lights could be seen two miles, (*fol.* 27. 31. 33.) Now whatever this witness may say about the green light, it is evident that either he was very inattentive or else it was very defective, for he did not see it two miles, nor until he came within four lengths of her, say twelve hundred feet.

Peter Albert, who was at the wheel of the Elm City, says (*fol.* 35) he first discovered the green light of the schooner when within *four lengths* of her, and that it was burning "pretty fair for the time of night. It was a fair light." He was not cross-examined, but was afterwards recalled by the libellants when he stated, (*fol.* 48.) that he meant fair for the weather. This however was an after thought, for Capt. Bowns had testified (*fol.* 31. 32.) that lights could be seen then and there a distance of two miles. The idea that at this time the lights were dimmed by the gray of the morning is without foundation, got up as an excuse or reason why the two men from the Elm City did not see it before they were within four lengths of it.

3. This is believed to be a fair statement of the testimony of the witnesses on the part of the schooner, tending to establish the character of her green light, and it is respectfully insisted that in and of itself, it does not show that it was such as the law required. But whatever force may be given to this testimony it is contradicted and overthrown by the testimony of the witnesses on the part of the appellants, which is substantially as follows :—

Henry Tracy, who was the pilot, and in the pilot house of the steamboat, and who was and had been for an hour looking out of the window, says (*fol.* 115) the sails were the first thing they saw of the schooner, although the starboard side was towards him, he did not see any light, nor did he see the schooner until he was within three or four hundred feet of her: that vessels' lights could have been seen from 1½ to 2 miles. On cross-examination he says (*fol.* 121) the light shining on the canvass was the first thing that attracted his notice: it was the reflection of the steamboat's lights upon the sails. He further says (*fol.* 125) that he saw the lookout at his post some 8 or 10 feet abaft the stem.

George C. Crocker, who was on the lookout, says (*fol.* 126, 127) he was on the lookout and had no other duty: that he was forward of the cathead, within 8 feet of the flagstaff: that he first discovered the schooner about three points on his port bow, and turned to make report, when he heard the bell ring to shut off: that he saw no light upon her, and first made her out by her sails, when she was about twice the steamboat's length off: that he could have seen her light if she had had any: that he had no difficulty in seeing the lights of the vessels which he had passed ten or fifteen minutes before. At *fol.* 130 he was asked if the schooner had had a good bright light burning, whether there would have been any difficulty in discovering her, to which he anwered, " none in the least." He was asked on cross-examination, (*fol.* 133) "do you swear there was no light on her starboard side?" "I do."

William D. Carpenter, who was at the wheel says, (*fol.* 134, 135) his attention was first attracted by hearing the pilot say, " what is that? port your wheel:" that he then looked through the port window which was open, and saw the schooner once and a half or twice the steamboat's-length off: that he saw no light upon her whatever. "The heads of her fore and mainsail looked as if some light was reflecting upon them." On cross-examination he says, (*fol.* 140) if there had been a spark of light there, he could have seen it: that there was no light there.

Daniel B. Sturges, the master of the steamboat, who had been below and asleep, says (*fol.* 171, 177) when he came on deck just after the collision, he saw the schooner lying with her head towards him,and that after picking up passengers, at early morning, he came within 200 feet of the schooner, when he saw a very dim, faint green light which could not have been seen 500 feet.

George F. Nye, who was in the pilot house of the Electra looking out, says (147, 148).he could see vessels' lights two miles: that he was heading right after the steamboat, being about three-quarters of a mile astern: that he was using his night glass when he discovered the schooner one point on his port bow and about a a mile off. Examined her but saw no lights upon her although he was looking for lights. This was two minutes before the collision. He also says (*fol.* 150) that as he came along he passed the schooner on his starboard side within twice her length, and looked towards her, when he saw a "dim green light" * * "I should not think I would see the light for half a mile. *It was a verg dim green light*" which he did not make out with his glass when looking for it. On cross-examination he described (*fol.* 152) his glass, that it magnifies one-quarter, (*fol.* 155) that when the steamboat blew her whistle, which was immediately after the collision, (*fol.* 172) she was about three-quarters of a mile ahead and he distinctly saw her lights. He discovered the schooner two or three minutes before he heard the whistle.

John H. Nickerson, who was in the pilot house at the wheel of the Electra, says, (*fols.* 156, 157) that seeing Nye looking through the glass, he looked in the same direction and saw the schooner "pretty handy" to the steamboat; that he did not make her out from her lights, but discovered her by her sails: that he noticed her as he came up to her, and he then saw a "dim light," that "it could not be seen half a mile, but if it had been burning brightly it could at that time have been seen a mile and a half." On cross-examination he says (*fol.* 158) if the light had been shining brightly he ought to have seen it when he first discoverd the schooner, that the light which he afterwards saw as they came up to the schooner could not have been seen half a mile, but it "could have been seen a quarter of a mile, a dim light, with the naked eye."

Isaac Gifford, who was on the Electra on the lookout, says (*fols.* 159, 160) he first saw the schooner about two lengths from the steamboat, and reported to the pilot who said he saw her: that he saw no lights: that a vessel's lights could then and there have been seen "a mile and a half or two miles;" that as they came up they passed within about 250 feet of the schooner, when he saw "a dim green light," and on cross-examination he says (*fol.* 161) she was then heading a little E. of N., and the steamer was heading "W. by S. or by ½ S."

Joseph W. Nye, who was master of the Electra, says (*fol.* 186) he was called on deck about the time the steamboat blew her whistle just after the collision, she was then half a mile ahead. When he came up to the steamboat he saw she was on fire, sent off boats to her, and about that time he noticed the schooner off his starboard side, about 700 or 800 feet distant, but *saw no light on her*: afterwards they ran along within 400 or 500 feet of her, discovered no lights upon her at this time: that at the time the Electra so came up to the steamboat, a vessel's signal light, if burning brightly, could be seen "three or four miles." On cross-examination he says (*fol.* 188) when he first saw the schooner, the Electra was heading W. by S., and the schooner was heading Northwesterly, or W. N. W.: that the weather was such that when he came on deck he saw Huntington light, a mile and a half distant, in plain sight.

James A. Howard, who was on the Electra, says (*fols.* 194, 195) that after they came up and had passed the steamboat, they backed good bright light burning, whether there would have been any difficulty in discovering her, to which he anwered, "none in the least." He was asked on cross-examination, (*fol.* 133) "do you swear there was no light on her starboard side?" "I do."

William D. Carpenter, who was at the wheel says, (*fol.* 134, 135) his attention was first attracted by hearing the pilot say, "what is that? port your wheel:" that he then looked through the port window which was open, and saw the schooner once and a half or twice the steamboat's-length off: that he saw no light upon her whatever. "The heads of her fore and mainsail looked as if some light was reflecting upon them." On cross-examination he says, (*fol.* 140) if there had been a spark of light there, he could have seen it: that there was no light there.

Daniel B. Sturges, the master of the steamboat, who had been below and asleep, says (*fol.* 171, 177) when he came on deck just after the collision, he saw the schooner lying with her head towards him, and that after picking up passengers, at early morning, he came within 200 feet of the schooner, when he saw a very dim, faint green light which could not have been seen 500 feet.

George F. Nye, who was in the pilot house of the Electra looking out, says (147, 148) he could see vessels' lights two miles: that he was heading right after the steamboat, being about three-quarters of a mile astern: that he was using his night glass when he discovered the schooner one point on his port bow and about a a mile off. Examined her but saw no lights upon her although he was looking for lights. This was two minutes before the collision. He also says (*fol.* 150) that as he came along he passed the schooner on his starboard side within twice her length, and looked towards her, when he saw a "dim green light" * * "I should not think I would see the light for half a mile. *It was a verg dim green light*" which he did not make out with his glass when looking for it. On cross-examination he described (*fol.* 152) his glass, that it magnifies one-quarter, (*fol.* 155) that when the steamboat blew her whistle, which was immediately after the collision, (*fol.* 172) she was about three-quarters of a mile ahead and he distinctly saw her lights. He discovered the schooner two or three minutes before he heard the whistle.

John H. Nickerson, who was in the pilot house at the wheel of the Electra, says, (*fols.* 156, 157) that seeing Nye looking through the glass, he looked in the same direction and saw the schooner "pretty handy" to the steamboat; that he did not make her out from her lights, but discovered her by her sails: that he noticed her as he came up to her, and he then saw a "dim light," that "it could not be seen half a mile, but if it had been burning brightly it could at that time have been seen a mile and a half." On cross-examination he says (*fol.* 158) if the light had been shining brightly he ought to have seen it when he first discoverd the schooner, that the light which he afterwards saw as they came up to the schooner could not have been seen half a mile, but it "could have been seen a quarter of a mile, a dim light, with the naked eye."

Isaac Gifford, who was on the Electra on the lookout, says (*fols.* 159, 160) he first saw the schooner about two lengths from the steamboat, and reported to the pilot who said he saw her: that he saw no lights: that a vessel's lights could then and there have been seen "a mile and a half or two miles;" that as they came up they passed within about 250 feet of the schooner, when he saw "a dim green light," and on cross-examination he says (*fol.* 161) she was then heading a little E. of N., and the steamer was heading " W. by S. or by ½ S."

Joseph W. Nye, who was master of the Electra, says (*fol.* 186) he was called on deck about the time the steamboat blew her whistle just after the collision, she was then half a mile ahead. When he came up to the steamboat he saw she was on fire, sent off boats to her, and about that time he noticed the schooner off his starboard side, about 700 or 800 feet distant, but *saw no light on her:* afterwards they ran along within 400 or 500 feet of her, discovered no lights upon her at this time: that at the time the Electra so came up to the steamboat, a vessel's signal light, if burning brightly, could be seen "three or four miles." On cross-examination he says (*fol.* 188) when he first saw the schooner, the Electra was heading W. by S., and the schooner was heading Northwesterly, or W. N. W.: that the weather was such that when he came on deck he saw Huntington light, a mile and a half distant, in plain sight.

James A. Howard, who was on the Electra, says (*fols.* 194, 195) that after they came up and had passed the steamboat, they backed down towards her: that he went aft as lookout while backing: that he then discovered the schooner bearing one point off his starboard quarter, that he saw no lights upon her, but saw her sails. On cross-examination he says (*fol.* 196) she lay head to the north, nearly at right angles with the Electra, and about 600 feet distant.

Charles B. Smith, chief engineer on the Electra, says (*fol.* 198) he saw the steamboat on fire, but did not see the schooner: that after they got through picking up those of the steamboat, they went in search of the schooner, and although they came within 30 feet of her, yet he saw no lights upon her.

4. The weight of testimony clearly establishes the fact, that the schooner's green light was dim, defective, and not such as the law required her to carry. In this case the evidence being contradictory, it is respectfully insisted, that the witnesses who were on the approaching steamboats are better qualified to judge of the strength and character of the light, than those who were upon the schooner.

(a.) The light of the schooner, whatever may have been its quality or power, was open to the view of, and was displayed as a signal to, and was intended that it should be seen by, approaching vessels, and not by those who were navigating her. If there had been any proper green light, it must have been clearly open to the view of those navigating and having charge of the respective steamboats, which were approaching, while it was not, and was not intended to be open to the view of those navigating the schooner, nor could they see it without going up into the fore-rigging, or perhaps standing upon the rail and looking back towards it, outside of the fore-rigging.

(b.) Now all the witnesses from the steamboat, and from the Electra, testify that the green light was not seen, and could not be seen, over a few hundred feet, while other vessels' lights, at the same time and place, could be seen at least a mile and a half, and these witnesses are in effect corroborated by the testimony of the two witnesses who were on the Elm City: Bowns and Albert.

Although there was some prevarication on the part of these two witnesses, and a manifest effort to give some reason, not prejudicial to the light, for their not seeing it until they were within four lengths of it, yet they failed to do so. They say it was 10 minutes before 5, and not quite daylight, when they saw it, (*fols.* 27. 30) and that a short time before, they could see lights two miles off, (*fol.* 31) which with the cautious answer to the question, "How was it burning?" "*Pretty* fair for the time of night," (*fol.* 35) clearly implies its dimness, which was the real reason why they did not see it sooner. But even if these two witnesses be considered as sustaining the character of the light, still the witnesses against its character outnumber them, and all others in favor of it. His honor the Circuit Judge seemed to think that as the District Judge saw the witneses he could better judge of their credibility, and which in some cases may be so, but in this it was not. The District Judge does not criticize the appearance of the witnesses, or pretend that one delivered his testimony more satisfactory than another, but manifestly tried to find some reason, not prejudicial to the light, why the witnesses from the Elm City could not see it until they were within four lengths of it, but which, it is respectfully insisted, he failed to do.

(c.) It was also suggested by the courts below, and this had very probably an influence in forming the erroneous judgment as to the sufficiency of the light, that the light of the steamboat which shone upon the sails of the schooner obscured the green light, so that it could not be seen by those on the Electra. But that is an error: for it appears that before the steamboat's lights shone upon the sails, the Electra had been running for some time within seeing distance of a proper light without discovering any light, and if the green light had been good it must have been seen during that time by those on that vessel, and especially by the witness who was using his marine glass. Moreover it clearly appears by the testimony of these witnesses that after the light had ceased so to shine upon the sails, the light was not discernable, until they came within a few hundred feet of it.

In Chamberlain vs. Ward, (21 *How.* 564) where it appeared that the light upon one of the colliding vessels, was "burning dimly," the court say, "signal lights are required by the Act of Congress, in order that they may be seen by an approaching vessel in season to enable those in charge of her, to ascertain and adopt the necessary precautions to prevent a collision with the vessel whose lights are so displayed: and when they are extinguished, or *burning so dimly* as not to fulfil the purpose and object for which they are required, they do not and cannot constitute a compliance with the Act of Congress."

SECOND.

Having failed therefore, to carry a sufficient green light, the schooner must be held to have been in fault, and the culpable cause of the collision, unless the testimony shows that the collision did not occur in consequence of the dimness of the light. The burden of proof thus rests upon the libellants, and they did not offer any testimony to that effect, but the courts below held that the failure of the steamboat's lookout to discover the schooner, arose from one of two things: either from inattention, or from the weather being so thick that he could not see an ordinary colored light any distance ahead, in which case the speed of the steamboat should have been slacked, but it is respectfully insisted that in these conclusions, the court below erred.

I.

The speed under the circumstances was not too great, and needed not to be slacked. If the schooner had had a proper light it might and would have been seen by those in charge of and navigating the steamboat a distance of a mile and a half or two miles, sufficiently far at all events to have given the steamboat abundant time and space to "adopt the necessary precautions to prevent a collision." The steamboat was running at the rate of between ten and eleven miles an hour, (*fol.* 145) at which speed she could have been sheered off, and stopped if necessary, and so avoided a collision. That vessels' lights could then and there have been seen this distance has already been considered (*ante. p.* 8.)

II.

The lookout was not inattentive to his duty.

1. The witnesses agree in stating that a vessel without a light could not be seen but a short distance, one of them says. (*fol.* 62) the schooner could not have been seen "two lengths of herself."

2. That she was seen at a greater distance by two persons on the Electra, does not show any inattention on the part of the lookout, because they saw her by the steamboat's lights, which reflected upon her sails: such reflection made her visible to them, although farther away, as soon as it did to the lookout. Judge Shipman says, "These witnesses undoubtedly discovered the Van Vliet about the same time that the officers of the Norwich first saw her, and I think it is clear that the lights of the latter were then reflected upon the schooner's sails."

3. But as the testimony shows that vessels' lights, if properly burning, could have been then and there seen from 1½ to 2 miles, the lookout cannot be held in fault for not watching with the utmost attention to see if some vessel might not be in the neighborhood without a light. His duty was to look for lights, and he should not be pronounced inattentive if he did not, under the circumstances, discover the schooner with her dim light, at the earliest possible moment. There is no testimony showing, or tending to show, that he could have seen her a moment sooner, even with the most extraordinary efforts.

4. Nor is it any evidence of his inattention that the pilot saw the schooner as soon and perhaps a little sooner than he did, for the pilot who was in the pilot house not fifty feet behind him, looking out of the window, was in as favorable a position to see an approaching object as he was. The mere fact that he did not report the schooner, is explained by his testimony, and the unfavorable inference attempted to be drawn therefrom by the circuit judge, in regard to his vigilance, was not warranted. He says that upon seeing the schooner he turned to report her, when he heard the bell ring to stop, from which he knew that the pilot saw her. (*fol.* 127) Even conceding that he should nevertheless have reported the schooner, yet his not doing so, did not cause the collision.

III.

It is not pretended that there was any fault or neglect on the part of the steamboat after the schooner was discovered. Everything was done that was possible, to avoid the collision. It is therefore respectfully insisted that the collision was caused by the neglect of the schooner to carry a proper green light, and that the decrees below should be reversed, and the libel dismissed with costs.

THIRD.

If, however, this court shall hold that the steamboat was solely to blame, then the appellants claim, that libellants are only entitled to recover a proportionate part of their loss, and not the whole, as adjudged by the decrees; which was so held by the Circuit Court, provided the Act of 1851 (9 *Stat.* 635) was applicable to the owners of the schooner and her cargo. He however held that such limitation applied only to the freighters of cargo upon the steamboat, who could not recover more than their just proportion of the value of the steamboat, and of her freight then pending.

I.

The limitation in the third section of the act, applies in case of damage to another vessel and her cargo, as well as to the goods on board of the vessel in fault. It is applicable to all claims for damages by the same collision.

1. The English statutes from which this was borrowed, embrace both classes of injuries, (*Abbott on Shipping p.* 394) and the English courts have repeatedly held that they were applicable in cases of injury to another vessel and to the goods on board of her, by collision. The following cases were suits to recover for injuries to vessels and their cargoes by collision.

Gale vs. Lawrie, 5 *B. & C.* 156.
The Mary Caroline, 3 *Wm. Rob.* 101, *S. C.* 6.
Notes of Cases, 536.
The Benares, 1 *Eng. L. & E.* 637.
Brown vs. Wilkinson 15 *M. & W.* 397.
The Northumbria Law Rep. 3 *Ad. and Ec.* 6, 24.
See also the opinion of Bayly, J. in the leading case of Wilson vs. Dickson et. al., 2 *B. & A.* 2.

These decisions were all prior to the passage of our act. It would be singular if Congress intended to adopt the English idea on this subject but partially, leaving the common law liability in full force as to one important part of the risks to which the owners are subjected. The reason of adopting a part, applies with equal force to the whole.

2. The grammatical construction of the language of the third section shows that the "loss, damage or injury by collision" therein mentioned, is a distinct ground for the limitation, and that it is not confined to the case of goods shipped on board. The words "or for any loss, damage or injury by collision," are mere surplusage if confined to goods shipped on board the offending vessel. Their destruction from whatever cause was already provided for. The statute should be so construed as to give effect to every clause if possible, and consistent with the general intention.

3. There is nothing in the provisions of the fourth section which controls this construction of the third section. The provisions of the fourth section are applicable to the case of collision. But if not applicable so far as the right to assign the vessel is concerned, (as was intimated by Merrick J. in 14 *Gray*, *p.* 307) still it does not attempt to cut down the third section in any of its provisions as shown by the same Judge.

4. In case of collision, (a case of injury to another vessels) the owners could not be held liable beyond the amount of their interest in the vessel guilty of the delict, and her freight then pending, and this view of the act is sustained by the opinions given in several cases in our own courts.

Allen vs. Mackay et. al. 16 *Law Rep.* 686, *S. C.*
1 *Sprague's Dec.* 219.
Walker vs. Insurance Co. 14 *Gray*, 288.
The Ann Caroline, Nelson J. Circuit Court.
Moore vs. Am. Transportation Co., 24 *Howard*, *p.* 39.
The Baltimore, 8 *Wall*, 385.

Merrick, J., in 14 *Gray*, *p.* 300, says:—"The aggregate value of the ship, and pending freight, is made to constitute the amount beyond which he cannot be required to make compensation in any of the designated instances of injury and loss." Aud on *p.* 303 he says: "It remains therefore only to consider whether in case of injury occasioned by collision the value of the ship is to be estimated in view of its condition immediately before, or at any time subsequent to its occurrence."

5. The fourth section evidently applies to the owners of a vessel injured by collision, as well as the shippers by the vessel in fault. The words, "or any property whatever" are an addition to the "goods, wares, and merchandise" previously mentioned. The words, "and for that purpose the said freighters and owners of the property" embrace both the owners of the freight shipped, and of "any property whatever" before mentioned. This con

struction renders the act harmonious and consistent with the great object in view in its enactment. Any other construction would render the act impracticable. As all persons sustaining damage by the collision would have a lien on the steamer for their damages, if she was seized by the owners of the schooner, how could the owners assign her for the benefit of the freighters? If, as the appellants claim, the provisions of this section apply to the cases mentioned in the third. no difficulty of this kind could arise.

See the opinion of Bayly J., in Wilson & Dickson 2 *B. & A.* 2, *the first case arising upon the* 53 *Geo.* 3.

II.

The appellants are entitled to the benefit of this act in this suit. No rule of law is changed except the extent of their liability. That can in no case exceed the value of their interest in the steamboat, and her freight then pending. It is said by Merrick J., (14 *Gray*, *p.* 306) "That a party if sued can defend, and if judgment goes against him he can limit the damages to the amount allowed by this act."

In Brown and Wilkinson, 15 *M. and W.*, 397, there was a default, and an inquest of damages. The defendant's vessel was sunk by the collision. The Court held that they could in the hearing reduce the damages to the value of the vessel at the time of the collision, and her freight then pending.

In Cannan vs. Meaburn, (1 *Bingham* 465) after a general verdict for the plaintiff, the cause was sent to a referee to ascertain the defendant's liability under the act.

In Allen vs. Mackay (16 *Law Rep. p.* 686) it appears that two suits were brought *in personam*, one for the vessel, and one for her cargo. It was necessary to bring in the freight she would earn in carrying the goods of her owners. No suggestion was made that the benefit of the act could not be obtained in that mode, because there was more than one claimant, or rather two suits. It is conceded that if the act is applicable to cases of collision, the appellants could get the benefit of it in this action, if there were only the libellants as claimants. But suppose they had filed separate libels in the same or different districts, would that fact prevent the appellants from obtaining the relief in the separate actions, which they could have if combined as they are in this?

The libellants claim, as understood, is, that in such cases the appellants must file a bill in equity, or take some steps, which are not very clearly indicated, to bring all parties in interest before some court. But that is a matter of the appellants' concern, and for their protection. They are liable only to the amount limited by the act. If the libellants sue in separate suits instead of adopting the proceedings they are authorized to take, they are not at liberty to say that the appellants must pay them their full damages sustained, or go into equity. The libellants can go there as well as we, and it is as much their duty as ours. It is for us to place before the court, the facts necessary to enable it to detrmine the amount less than their whole damage, which the libellants are entitled to recover. If there is any inconvenience arising from the number of the freighters, it is our misfortune, not theirs.

The court can protect their interest well enough. The only danger is that we could not get as full protection in this form as in some other. The libellants have sought this form of redress, as they had a right to, and we are entitled to all the protection which we can derive from the act in it. If we cannot have the relief in this action, we may not get it anywhere, and the provision of the act would be rendered useless to us.

In Montgomery vs. Anderson (21 *Howard* 386) it was held that the court in admiralty could settle the amount due the libellant, leaving the sum he was entitled to recover, dependent on other claims. In this case the other claimants were before the same court, but in separate libels. It makes no difference whether the libel is *in rem* or *in personam*.

14 *How.* 364.

III.

The purpose of the act was two-fold, namely, to limit the liability of "ship owners" to the value of their interest in the vessel and freight, and when the claims exceeded such value, to allow the claimants to share therein, *pro rata*. This clearly appears from the language of the act itself. The third section declares that the "owners" shall not be liable for any loss, damage or injury by collision, nor for any act &c, done &c, without their privity or knowledge, exceeding the value of their interest in the ship or vessel, and her freight, and the fourth section provides that if such value shall not be sufficient to pay all, the claimants shall receive a proportionate share thereof.

1. If claims for all the causes mentioned and referred to in this section, belonged to one party, and they exceeded the value of the vessel and freight, the recovery would be limited to such value. If, in this case, the libellants had not only owned the schooner and her cargo, but also the merchandise on board the steamboat, the act would have applied, and they could not have recovered more than the value of the steamboat and her freight, not even if they had in the first instance obtained stipulations for the entire amount of their claim.

The Duchess de Brabant, 1 *Swabey, R.* 264.
2 *Parsons on Mar. Law, p.* 696.

2. Although the claims did not belong to one party but to diverse parties, consisting of the owners of the schooner and her cargo, and the owners of the goods on board the steamboat, yet the principle is the same. The mere fact that there are two classes of claimants does not affect the right to the limited liability. Even though there may appear to be some difficulty in applying the remedy in such way that the owners may derive the full benefit of the act.

3. If the 3rd and 4th sections, which declare and fix the rights and interest of the parties, are not sufficient to enable courts of admiralty to administer the law, as the District Judge held, then the owners may be compelled to resort to a court of equity for that purpose. (6 *Simons*, *R.* 29.) But a resort to equity is not necessary, for as the act limits the recovery, it confers sufficient jurisdiction to carry it into full effect.

The 4th section declares that if any such loss shall be suffered by several freighters, &c., and the whole value of the ship and her freight for the voyage shall not be sufficient to make compensation to each, they shall receive compensation in proportion to their respective losses. They have no right to recover more. This section declares, and settles the rights of the parties, and this court upon the proper facts being established may apportion the sum between the claimants, by not permitting one party to recover more than his just proportion. In this case the libellants had no legal right to a decree for more than their just proportion, and the refusal to take jurisdiction and administer the act, or any construction that enables them to obtain their full claim, while others can only obtain a proportion, is not only in violation of the intention of the act, but against every principle of equity.

1 *Parsons* 398.

4. Moreover it would be inconsistent with that part of the fourth section which authorizes a transfer of the vessels to trustees, in exoneration of all claims, and which gives to all claimants an equal interest in the proceeds to arise therefrom. When such transfer is made, the act declares that "all claims and proceedings against the owner or owners shall cease." Now, if after this suit was commenced, the steamboat had been transferred under the fourth section to trustees, it would have ended this action, and all parties would have been turned over to obtain compensation out of the proceeds, in just proportion.

The Circuit Court properly held that the District Court had jurisdiction to administer the claim. The subjct matter, viz: collision, was clearly within its jurisdiction, and the libellants have submitted themselves to its jurisdiction, by bringing their action : the

court may retain it for purposes necessary to determine the rights of all parties, and may require the libellants to do equity by taking their share of the fund, and no more. The District Court, though not a court of equity, administers the law on equity principles.

21 *How. R.* 386.

5. This construction brings the act into harmony with the early maritime law.

1 *Parsons M. L.* 395 *and cases cited.*

FOURTH.

The appellants therefore submit and insist, that if they are held liable, the court should enforce the act in question, by limiting the libellant's recovery to their proportionate share of the value of the steamboat and freight, to be ascertained by due course of law.

E. H. OWEN.
J. HALSEY.
Counsel for Appellants.

Supreme Court of the United States.

THE NORWICH AND NEW YORK TRANSPORTATION COMPANY, *Appellant*,

vs.

WILLIAM A. WRIGHT, AND OTHERS, *Libellants and Respondents*.

Appeal from the Circuit Court of the United States for the District of Connecticut.

BRIEF

ON THE PART OF THE APPELLANT.

GEORGE B. HIBBARD, for Appellant,
BUFFALO, N. Y.

WARREN, JOHNSON & CO., Printers, 197 Main Street, Buffalo, N. Y.

Supreme Court of the United States.

THE NORWICH AND NEW YORK TRANSPORTATION COMPANY, *Appellant*,

vs.

WILLIAM A. WRIGHT, and others, *Libellants and Respondents.*

Appeal from Decree of the Circuit Court of the U. S. District of Connecticut.

BRIEF ON THE PART OF THE APPELLANT.

GEORGE B. HIBBARD, *for Appellant, Buffalo, N. Y.*

The points contended for in this brief are these:

First. That the Act of Congress of 1851, limiting the liability of ship owners,

9 *Statutes at Large*, 635,

limits the liability, in cases of injury caused by one vessel to another or her cargo, in cases of maritime collision; and

Second. That a Court of Admiralty can apply the provisions of the law in cases where only one of the parties injured is before the court prosecuting his claim.

FIRST.

The origin of the principles embodied in the law, the history of legislation on the subject, and the object of the law itself, show conclusively that it should apply to cases like the present.

I. Such aids in the interpretation of the law, are of course proper.

1 *Kent's Com.*, 460.
Tonnell vs. Hall, 4 *Comstock*, 140.
Aldridge vs. Williams, 3 *Howard*, 1, 24.

II. By the civil law, the owners of vessels, were liable in matters *ex delicto*, according to the amount of their interests in the ship. Its provisions were somewhat different however, from the later law of maritime Europe.

2 *Brown's Cir. and Ad. L.*, 136, 138, 141.
The Rebecca, *Ware*, 194, 195.
Machlachlan on Mer. Sh., 106.

III. The principle, that in matters *ex delicto*, the liability of ship owners, should be only co-extensive with their interest in the ship, became the law of maritime Europe, with but few exceptions. It was the law of Holland, Hamburg and Sweden, and of almost, if not the entire north of Europe. It was the law of France by special ordinance. It was largely, if not entirely, the law of communities bordering upon the Mediterranean.

Grotiu's De Jure Belli et Pacis Sec., 2, *chap.* 11, *sec.* 13.
Marine Ordinance, Louis XIV., title 4.
2 *Peter's Ad. Decis., Appendix XVI.*
Cleirac Navigation des Rivieres, art. 15.
Consulat de la Mer., ch. 34.
The Rebecca, Ware, 195, 196, 197.
Jacobsen's Sea Laws, 328.
Abbott on Shipping, 395.
Pope vs. Nickerson, 3 *Story*, 465.
Machlachlan on Mer. Sh., 107.

IV. In these laws and ordinances, is found the origin of the first express legislation on the subject; and that legislation, has been said, only to enact the provisions or principles of older maritime law.

2 *Brown's Cir. and Ad. L.*, 147, *note.*

V. The case of *Boucher vs. Lawson* was decided in 1733. It decided that ship owners were liable for coin embezzled by the masters of ships.

Boucher vs. Lawson, Rep. Temp. Hardwicke, 85.

Alarmed by such decision, the merchants of London, on petition to Parliament in 1734, procured the passage of the Act 1 Geo. II., ch. 15.

Bacon's Abr., 594.
Abbott on Sh., 395.

This Act provided that the ship owner should not be liable for such embezzlement; and further provided, that such owner should not be liable "for "any act, matter or thing, damage or forfeiture, "done, occasioned or incurred, from and after the "twenty-fourth day of June, 1734, by the master or "mariners, or any of them, without the privity and "knowledge of such owner or owners further than "the value of the ship or vessel with all their "appurtenances and the full amount of the freight "due, or to grow due, for and during the voyage "wherein such embezzlement * * * or other "malversation * * * shall be made, committed or done."

Abbott on Shipping, 395.
9 *Eng. Stat. at L.*, 365.

The Act therefore provided for entire exemption from liability in cases of embezzlement, and for a liability commensurate with the interest of the owner in the ship, for any other act, matter or thing, done, occasioned or incurred, etc.

The case of *Boucher vs. Lawson* was followed by the case of *Sutton vs. Mitchell;* and that by the case, decided in 1785, of *Forward vs. Pittard.*

Sutton vs. Mitchell, 1 *T. R.*, 18.
Forward vs. Pittard, 1 *T. R.*, 27.

Lord MANSFIELD, in deciding this last case, says: "There are events for which the carrier is liable, *independent of his contract.*" That further responsibility is "by the custom of the realm, that is, by the common law, by which a carrier is in the nature of an insurer." Upon familiar principles, he therefore decides a carrier, in a case of accidental fire, to be liable for the entire loss happening thereby to the owner of the goods in process of carriage.

This was the undoubted common law rule at the time; and under the custom of the realm, the law of England being established to be thus different from that of continental Europe, these decisions were followed by the acts of

26 *Geo. III.*, *ch.* 86, *in* 1786;

and this, by

53 *Geo. III.*, *ch.* 159, *in* 1813.

The object of all these acts is stated in some of the acts themselves. It was stated in the preamble to the act of 7 *Geo. III.*, that: "It was of the "greatest consequence and importance to the king-"dom, to promote the increase of the number of "ships and vessels, and to prevent any discourage-"ment to merchants and others from being interested "and concerned therein." The courts have recognized the whole object of this legislation to be "to encourage persons to become the owners of ships."

Gale vs. Laurie, 5 *B. and C.*, 156.

These acts are the sources of the Act of Congress, of 1851. The phraseology of the English Acts, in important particulars, is the same as that employed in our own.

VI. The common law rule in all its severity, unqualified by legislation, became the law of this country. The case of the Lexington was decided in 1848,

> *The N. J. S. M. Co. vs. The Merchants' Bank*, 6 *How.*, 344,

and was followed by the Act of 1851. Previous to this, and as early as 1818 and 1821, the legislatures of the States of Massachusetts and Maine had enacted similar laws.

> 3 *Kent's Com.*, 217.

Such acts are regarded as in harmony with, and as carrying out the principles of the laws and ordinances of maritime Europe, to which reference has been made.

> *Stinson vs. Wyman*, *Ware*, 172, 176.

The whole object of such legislation, professedly and necessarily, was by decrease of liability of those upon whom no personal fault could be charged, to promote that commerce which an enlightened policy should seek to foster. No reason can exist why limitation of liability should not apply to cases of damage done to another vessel by collision. The law itself is one which certainly should have liberal construction.

This Court has held,

> *Moore vs. The Am. Trans. Co.*, 24 *Howard*, 1,

that the Act of Congress in question applies to the owners of vessels navigating the great western lakes. Upon those waters one of the greatest, if not the greatest liability of the ship owner, innocent himself of personal fault, is the liability for injury to other vessels and their cargoes, by collision. It may not be proper to refer to Congressional discussion of this law while upon its passage,*

> *Aldridge vs. Williams*, 3 *Howard*, 124.,
> *Bank of Penn.*, *vs. The Commonwealth*, 7 *Harris*, *Penn. R.*, 144,

but were such reference admissible, it would be seen that it was the intent of Congress that American ship owners should be afforded all the protection that was afforded to their English rivals, under legislation such as that of

---

* NOTE.—That the debates in Congress cannot be relied upon in interpretation of the law is most apparent from the language of TANEY, C. J., in *Aldridge vs. Williams:* "In expounding this law the judgment of the Court cannot in any degree "be influenced by the construction placed upon it by individual members of Con-"gress, in the debate which took place on its passage, nor by the motives or rea-"sons assigned by them for supporting or opposing amendments that were offered. "The law, as it passed, is the will of the majority of both Houses, and the only mode "in which that will is spoken is in the Act itself, and we must gather their intention "from the language there used, comparing it, when any ambiguity exists, with the "laws upon the same subject, and looking, if necessary, to the public history of the "times in which it was passed."

Indeed, it has been most notably held by this Court, in construction of this very Act of 1851, that the debates could not be referred to. The proviso, at the close of the Act, that it should not apply to vessels employed in "inland navigation," was added, for the express purpose of excluding the western lakes from its operation. 23 *Congressional Globe*, 717, 719. And yet this Court held in *Moore vs. The Am. Trans. Co.*, 24 *How.*, 1, that the Act should apply to vessels employed on those waters.

53 *Geo. III., ch.* 159,

which, beyond all question, limited the liability of ship owners in such cases. The rivalry of the two countries, in maritime adventure, was strong. It was intended that it should be carried on with equality of risk. As will be seen hereafter, language broad enough and strong enough, was employed in the Act of 1851, and there first employed, to preserve that equality—language which can have no affirmative, independent meaning, unless it has the meaning here contended for.

23 *Congressional Globe*, 715, 719.
Moore vs. Am. Trans. Co., 24 *How.*, 1, 9.

VII. The object of the Act being so clearly exhibited in its history, and it being the liberal offspring of enlightened policy, liberal construction, were such construction necessary, should be given it, that this object may be attained. That such should be the construction of such a statute, under time honored rules, and every rule that can possible apply, is without doubt.

1 *Kent Com.*, 64.
9 *Bacon's Abr.*, 251.
Chamberlain vs. The W. T. Co., 44 *N. Y. R.*, 305.*

---

* **Note.**—In this very late case of *Chamberlain vs. The Western Transportation Company*, (reversing the same case, 45 *Barbour*, 218,) a rule of construction of this very Act is given. The following is one of the reporter's notes of the substance of

Under such construction, beyond all question, it would limit the liability of ship owners for injuries done to another vessel by collision; but, as will be seen hereafter, such liberality of construction need not be invoked.

SECOND.

By the very terms of the Act itself, it is apparent, that its limitations of liability extend to cases of injury done by collision to another vessel.

I. The language of the third section provides for such limitation. It provides that " the liability " of the owner or owners of any ship or vessel for " any " embezzlement, loss or destruction by the " master, officers, mariners, passengers or any other person or persons, of any property, goods or " merchandise shipped or put on board of such " ship or vessel, or for any loss, damage or injury " by collision, or for any act, matter or thing, loss, " damage or forfeiture done, occasioned or incurred " without the privity or knowledge of such owner " or owners, shall, in no case, exceed the amount " or value of the interest of such owner or owners,

---

the case: "Although the statute (the act of Congress of 1851 to limit the liability " of ship owners) changes the common law, it is not penal or in derogation of natural right, so as to require strict construction. It was enacted to remedy the rigor " of the common law, and should be construed, if not liberally, at least, fairly, to " carry out the policy which it was enacted to promote; and the broad terms, 'any " goods or merchandise whatever,' (in the first section where the word 'property' " is not used,) cannot be held to exclude baggage."

" respectively, in such ship or vessel and her freight " then pending."

9 *Stat. at L.*, 635.

As will be seen upon analysis of the language of this section, it provides for three classes of liability. It is so regarded by the commentators.

2 *Parsons on Shipping*, 132.

The second of these classes is " for any loss, damage or injury by collision." This language is here first found in any statute, English or American.

2 *Parsons on Shipping*, 125.

The whole statute, in all its parts, under familiar rule, must be so construed that "*no clause, sentence or word shall be superfluous, void or insignificant.*"

9 *Bacon's Abr.*, 239, 241, *Statute I.*, 2.
19 *Viner's Abr.*, 528, *Statute I.*, 6.
Dewarris on Statutes, 699.
Opinions of the Judges, 2 *Pick.*, 571, 573.

Limitation of liability for injuries done by collision, to the cargo of the ship of the owner claiming such limitation, could easily be found in the section, without reference to the words last quoted. It could be found in the limitation of liability in the third class of cases, and in the language, old as the first English Act on the subject, in limitation of liability for any act, matter or thing, loss, damage or forfeiture done, occasioned or incurred without the privity or knowledge of such owner. The words, " for any loss, damage or injury by collision," must, therefore, be "superfluous, void and insignificant," unless, in accordance with the spirit of the legislation, and in furtherance of its very object, they have the meaning here contended for, and limit the liability of the ship owner in cases of injury by collision to another vessel. Certainly, no rule of construction will permit it to be said that Congress, thus employing these words for the first time, had no object in their employment, and that they are superfluous, void and without meaning.

With every deference to the very learned Circuit Judge, it may be said that the law was not enacted simply with reference to the severe rules of the common law, and with respect to the liability of common carriers. It was the naturalization, so to speak, of more liberal principles, born of broader and more enlightened policy, continental and not insular in their origin. Had it been only the object of the law to qualify the severe rules of the common law as to common carriers, it could have been most easily, most plainly, done by providing that ship owners should not be regarded as common carriers. Nor is it sufficient to make the words void of meaning to say that the statute of 53 George III., contained express limitation of liability in such cases, the language of which Congress did not see fit precisely to adopt. Congress did employ the language, "for any loss, damage or injury by collision," words not found in any statute of either George; and which can have no meaning independent and affirmative, as they must have, if possible, unless it be the meaning they so aptly express, in plainest language, and which includes the meaning of the express limitation in this particular of the statute of 53 George III. They stand in the place of that limitation. Comment upon the statute of 53 George III., and inquiry as to the absence of the language of its express limitation, in this respect, in the Act of Congress, is answered fully and altogether, by quotation of the broad words, "for any loss, damage or injury by collision," words which place the American ship owner upon an equality of risk with the English ship owner, as it was the avowed and apparent object of Congress to do. The whole spirit of international mercantile legislation tends toward unity of rule in such cases. While the laws of the whole maritime world have, for instance, grown uniform with respect to the rules of navigation,

13 *Stat. at L.*, 58,

is it to be held that rules as to the liability of American ship owners are bound by the narrow spirit of the common law, as to the liability of the English common carrier? Shall not our commerce be fostered, our ship owners be protected, in harmony with the rules adopted by nations other than those who had adopted them before English legislation upon the subject began in the reign of the second George, to which reference is above made, and since adopted by England herself?

Machlachlan on Mer. Sh., 108.

If this court gives the narrow construction to the law, which in this respect, was given it in the Circuit, it establishes a narrower rule than that now applied to the same subject, it is believed, in every great mercantile nation.

II. Nor was it the object of this section only to relieve the ship owner from his severe liability as common carrier—from his liability as an insurer against all but the act of God and the public enemy, beneath the custom of the realm. Had this been its object, or the object of the English statutes, neither would have contained any provision limiting the liability of the ship owner "for any loss, "damage, or injury, done, occasioned, or incurred, "without the privity or knowledge of such owner or "owners." This clause, in this respect, and the words in the first section, "design or neglect of such owner or owners," relieve the owners, (and the act has been said by this Court to be one relieving *owners* as such,) in the cases to which the sections apply, where there has been no fault on their part personally.

> *Walker vs. The Transportation Co.*, 3 *Wallace*, 150, 153.

It relieves them from liability for the negligence of their servants, and from liability for losses, which it cannot be the intent of the statute, within its principle and object, that they should be more relieved from, than in cases of this kind. It cannot therefore be said that it was only the object of the law, to limit the liability of ship owners *as common carriers*, for it limits their liability in very important classes of cases, under any construction, altogether independent of their liability *as common carriers;* and relieves them in such cases, from the operation of the most general maxim, *respondeat superior.*

III. Again, that ship owners are at least generally common carriers, and as such liable in the absence of special contract or express legislation, for nearly all things, except the act of God or the public enemy, is of course settled.

1 *Parsons on Sh.*, 245, *et seq.*

The peculiar and severe liability of the common carrier, is, of course, only to the owner of the property carried. A most important reason for this liability which, of course, is that of an insurer and without proof of negligence, is that the proof as to the circumstances of carriage, or injury, is entirely within the carrier's control. Beyond question, of course, and this is the construction of the Circuit Court, the Act of Congress does limit the liability of the ship owner in cases of collision, and otherwise, where the loss, damage, or injury is to the cargo his ship is engaged in carrying, limits it in cases where the proof is under his own control, and as to a party to whom his obligation is the most severe known to the law. Is it to be supposed that, while Congress unquestionably limited such liability, it did not intend to limit the liability in cases where losses or injuries would be of the same precise character, and arise out of the same act, and be caused to parties who stood in no especial relation to the ship owner, and who would have their own independent proof, *i. e.*, the testimony of the crew of the injured vessel? Let us illustrate: A collision happens; the owner of the vessel in fault, would stand, were it not for this act of Congress, under the severe obligations of the common carrier, to the owner of the cargo of his own ship, and would have control of the proof, relating to such injury. For injury done to that cargo, by the collision, the ship owner can, beyond question, and under the decision of the Circuit Court, invoke the limitation of the Act. But the cargo of the other vessel is also injured. To the owner of this cargo he stands in no especial relation—is under no severe obligation; and that owner can have proof as to the matter, not within influence of the party sought to be charged. And yet as to liability for injury to that cargo, no limitation can be claimed. And this, while the object of the statute was to give the ship owner the benefit of time-honored maritime law, to promote commerce, to place our mercantile marine, beneath the same protection as that forced by the times and the enlightened policy of the maritime world, even upon England, slow to change the common law as she ever has been. Such cannot be the construction, when the object of the law, the exact nature of its intent, and the rules for the construction of the language, which it first employs in this relation, are kept in view.

IV. By the rules of the common law, the ship owner is relieved from liability for damages arising from the act of God or the public enemy. The Act of Congress relieves him from liability, or limits his liability in all cases where he is not personally in fault, under any construction, except for damages done by his ship to another or her cargo, by collision. In such cases, more rarely than in most, if not all, the others, would his personal fault be a cause of the injury. Keeping in view the object of the Act of Congress, and when language is found in the third section broad enough to limit the liability in such a case,—language indeed which, as has been seen, can have no other affirmative, independent application; and what possible reason can be given, as within the principle of the law, for such construction as would make the liability of the ship owner unlimited in such cases? Certainly Congress could not have intended that such liability should be unlimited in these cases, where the ship owner would be most innocent of fault, when in all other cases, where he is innocent of fault, he is under no liability or a limited liability.

V. The language "for any *act*, *matter* or *thing*, loss, damage or *forfeiture*, done, occasioned, or incurred," aids largely, also, in the interpretation of the section. This, itself, is broad enough in its meaning, to include cases of the kind of the present, under such construction as the Act should receive. Most certainly those words were broad enough to include any injury which might happen without his privity, to the cargo the ship owner was engaged in carrying, from any cause, and under any construction. The words, "for any loss, damage or injury by collision," certainly could not have been added from any desire to put it beyond doubt, that injury to the cargo the ship owner was engaged in carrying, should not be included in the operation of the act, for about that there could be no doubt. It is suggested in the opinion delivered at Circuit, that the words, "for any loss, damage or injury caused by collision," should be construed the same as if the word "thereto" had been added after the word "injury." Would not the same construction require the word "thereto," to be regarded as employed in the last part of the sentence? It is impossible to do it with any propriety, that part containing, as it does, such words as "matter" and "forfeiture," words with which "thereto," cannot be used in such connection. Is not the proper construction this: that while the last part of the sentence was broad enough to apply the section to cases like the present, yet as there might be question about it, under the rule relating to the construction of particular words followed by general words, *ejusdem generis*, the words for "any loss, damage or injury by collision," were added that there might be no doubt, for those words could have no other independent and affirmative meaning?

VI. Nor, it is most respectfully submitted, should anything contained in the fourth section lessen the significance of the third section. The argument is, that, as under some rules of construction, the fourth section, as is claimed, should have a limited meaning, therefore the meaning of the third section must be dwarfed to that of the fourth. Would not the fairer argument be, that, as in the third section the right is given, the intent of Congress expressed, the language of the fourth section, if it could be, should be held to obtain significance from the third? Is one great object of the law—an object in entire harmony with its whole principle—to be unattained, because the fourth section, perhaps, might have been expressed with more amplification of language? Why look to the less important section for the leading idea of the law's interpretation?

The Act, like many acts where settled phraseology has been employed and altered, is drawn, certainly, in not the best language. Still, as will be seen, its fair construction—its construction even under the rule as to particular words and general words, *ejusdem generis*, referred to by the learned Circuit Judge, aided, enlarged by the principle, object and language of the third section—makes the third section applicable to such a case as the present, as well as others where the owner is not in personal fault.

VII. The fourth section really contains nothing, however, which prevents the third section from applying to cases of this kind. The fourth section provides "that if any such embezzlement, loss " or *destruction*, shall be suffered by several freight- " ers or *owners* of goods, wares or merchandise, or " *any property whatever*, on the same voyage, and " the whole value of the ship or vessel and her " freight for the voyage shall not be sufficient to " make compensation to each of them, they shall " receive compensation from the owner or owners " of the ship or vessel in proportion to their respec- " tive losses, and the owner or owners of the ship " or vessel, or any of them, may take the appropri-

" ate proceedings in any court for the purpose of
" apportioning the sum for which the owner or
" owners of the ship or vessel may be liable
" amongst the parties entitled thereto. And it
" shall be deemed a sufficient compliance with the
" requirements of this Act, on the part of such
" owner or owners, if he or they shall transfer his
" or their interest in such vessel and freight for the
" benefit of such claimants to a trustee, to be
" appointed by any court of competent jurisdiction,
" to act as such trustee for the person or persons
" who may prove to be legally entitled thereto,
" from and after which transfer, all claims and pro-
" ceedings against the owner or owners shall cease."

The fourth section derives its significance from the third. By use of the words "*loss*," "*destruction*," "*owners*" and "*of any property whatever*," it provides for proportionate compensation to all parties suffering the three classes of loss, &c., provided for in the third section. The words are certainly broad enough for this purpose, under any view which can be taken, unless, perhaps the narrowest rule of construction prevails, and it is held, besides, that the fourth section—the least important of the two—cramps the scope of the third, and that the third, in which the intent and object of Congress was doubtless intended to be expressed, and which is much the more important section of the two, shall be held not to give any meaning to the general words employed in the fourth.

That the law should be construed, regarding the third section as the more important of the two sections, and, therefore, the more expressive of legislative intent, has been already shown. So regarding the fourth section, it can be easily applied to all cases of injury, &c., happening to "*any property*" "*on the same voyage*," (regarding the whole voyage, in this respect, as one point in space and time,) as the acts of the Georges were, by their terms, made applicable to various injuries, taking place at different times on the same voyage.

Abbott on Sh., 395, *et seq.*
6 *Bacon's Abr.*, 594, *et seq.*

But, even were the fourth section of the act not applicable in some of its provisions, to some of such cases, as seems to have been held in

Barnes vs. The Steamship Co., Philadelphia Leg. Int., June, 1868;
Walker vs. Boston and Hope Ins. Cos., 14 *Gray*, 288;

yet it does not follow that the third section may not still apply. *Walker vs. Boston and Hope Insurance Companies, expressly holds the act to apply to such cases, to cases of injury done by collision to another ship*, but (see the language of MERRICK, J., at pages 307 and 308) holds that the fourth section does not so far apply in such a case, as to permit assignment of the wrong doing ship to a trustee, &c., and, among others, for, at least, the plausible reason (having reference to the English rule as to when the value of the ship owner's interest is to be estimated; and the concluding language of the fourth section of the Act of Congress, as bearing on that question under the Act of Congress—a question which is not attempted to be considered in this brief,) that, by collision, a vessel might be considerably damaged, and, therefore, her assignment, &c., to a trustee, &c., should not be permitted. It holds that the time at which to estimate the value of the colliding vessel in fault is just before the collision, thus, in this particular, following the English rule, but it expressly holds that the third section of the Act applies to the case of injury done to one vessel by another by collision.

VII. Beneath all light then which can be thrown upon the subject, under the policy in which such legislation had its inception; by the history of that legislation; in the intent of Congress and the objects it sought to attain; beneath every rule of statutory construction—not the narrowest alone—but every rule of construction, including the narrowest; by consideration and comparison of the law in all its parts; and, above all, by the plain language of the third section, it is apparent that that section applies to cases of injury done by collision by one ship to another.

THIRD.

Upon express authority, the Act of Congress applies to such cases.

I. Since its passage, such, it is believed, has been the general opinion on the subject. Such long continued opinion should receive grave regard in construction of the law.

Pease vs. Peck, 18 *Howard*, 595.
9 *Bacon's Abr.*, 246.
Broom's Maxims, 533.

II. But by express decision in several reported cases, (in others unreported,) it has been held that the Act applies to such cases.

Allen vs. McKay, 1 *Sprague*, 219.
Walker vs. Boston and Hope Ins. Companies, 14 *Gray*, 288.
Place vs. The City of Norwich, 1 *Ben.*, 89.

And see also,

Vide *Moore vs. Am. Trans. Co.*, 24 *How.*, 1, 39,

and the

Opinion of the District Court in this case. 1 *Benedict*, 156,

and

The Wild Ranger, 1 *Vernon Lushington*, 553, 564, 565.

III. Reason, all rules and authority thus interpreting this law, and perhaps the most important interests in the nation, having grown up under the idea that such is its meaning, this court will be slow to hold such novelty of construction as was given it in the Circuit, to be the correct one. It is but a question of construction,—as to the meaning of mere language, to be considered in all respects—involving no question as to the possible overthrow of widely extending principle. The government, any co-ordinate branch of the government, may be said, in one sense, to be estopped from now giving a new meaning to the law, where another has been so long, so authoritatively given it.

FOURTH.

In cases to which the act of Congress applies, the court, whether the action be *in personam*, or *in rem*, will take care, and has the power to see, that the party prosecuting, be he the only party injured, or one of several, shall receive no more than he is entitled to; and that the ship owner shall not, through any use or abuse of legal proceedings, be compelled to pay beyond the amount to which his liability is limited by the Act. This point was so held at the Circuit.

I. The policy of the Act has been already shown, and is most apparent. No possible reason can be even suggested, why the liability of the ship owner should, in any case, be greater, where there are several parties against whom its protection is claimed, than where there is but one. And yet, this certainly might be the case, unless the construction of the Act given it by the Circuit Court, in this particular, is the correct one.

II. Judicial construction of the English Acts, can be of but little, if any aid, in this respect. The English Act provided especially for resort to a Court of Equity, for the purpose of determining the proportionate amounts to be recovered by several parties in case of loss to several.

Abbott on Sh., 517.
6 *Bacon's Abr.*, 595, 596.

The English admiralty beside, has ever recognized the principle of proportionate liability in such cases, and, wherever the practice of the court would possibly permit, has applied it, even in actions *in rem.*

The Clara, *Swabey*, 1, 4, 5.
The Saracen, 2 *W. Rob.*, 451.
The Normandy, 3 *Eng. Ad., and Eccl.*, (*Eng. L. R.*,) 152.

III. In England, beside, with the extended jurisdiction of its equity courts; and where there is no such limitation as there is upon the jurisdiction of courts of the United States, as to parties, &c.; and where no such courts as our State Courts, those of each State with their own separate jurisdiction, and in which, in the close relations of our commercial world, various actions might be brought by the several sufferers from one calamity — in England, actual justice can be attained by compelling all parties, where a proportionate liability is admitted or claimed, to resort to a Court of Equity.

Such is not practically the fact in this country; and here it would be a practical denial of justice, a practical deprivation of parties entitled to it, from the privilege of the Act, unless its provisions can be applied, as it was decided they might be by the Circuit Court. Certainly, a Court of Admiralty—a court of equitable nature and flexible practice—will not hesitate (unless its practice renders it impossible) to so apply an Act of Congress as to make its provisions efficient.

IV. Nor is there any difficulty in the application of the law, either in actions *in rem* or *in personam*. When, in such cases, the application of the law is invoked, the party claiming it has but to prove, in diminution of damages, the amount of the injuries done, and the value of the ship, and her freight pending, (at what moment of time that value must be estimated, and whether a part owner's liability can be limited only to the proportion of his part, are questions not attempted to be discussed here,) and the basis for determination of the amount of the decree, if any, to be rendered is established. Such determination would, in no measure, bind parties not before the court. The parties prosecuting and before the court, would obtain all they are entitled to. When others prosecute, by the same method, the same just result can be arrived at, and the Act, in all the cases, in its principles and its equities, applied. It is not necessary that all parties in interest should be before the court, as it seems to have been the fundamental error of the District Court in this case (1 *Benedict*, 156, 165) they should be. Each can establish and protect his own right when he really comes before the court. Were the parties all prosecuting in several suits in the same court, that court would take care that neither should recover more than his proportion, whether or not that court had the equity jurisdiction contemplated by the English statute.

> *The Clara*, *Swabey*, 1, 4, 5.
> *Montgomery vs. Anderson*, 21 *Howard*, 386.

Will a Court of Admiralty allow one party to be prejudiced and another to receive more than he is entitled to, because several suits are brought in several courts? The right to resort to a "court of competent jurisdiction," &c., provided by the fourth section, is an affirmative permission, not necessary to be resorted to, given to an interested party. If this part of the fourth section, in accordance with

> *Walker vs. The Boston and Hope Insurance Companies*, 14 *Gray*, 288,

be held not to apply to such a case as the present, then is there the greater reason that the power to apply the third section, as held at Circuit, should be here affirmed.

The practice of our Admiralty Courts, more flexible, as their jurisdiction, before the Statutes of Victoria, was larger than that of the English Court of Admiralty,

> *Waring vs. Clark*, 5 *Howard*, 441;
> *Jackson vs. The Magnolia*, 20 *Howard*, 296;

certainly will permit the Act to be so applied.

V. The construction of the Act, in this particular, by several American authorities, has been in accordance with the opinion of the Circuit Court.

Place vs. The Steamboat City of Norwich, 1 *Benedict*, 89.

Walker vs. The Boston and Hope Insurance Companies, 14 *Gray*, 288, 306.

FIFTH.

Upon consideration of the Act in every aspect therefore, it should be held (in accordance with the opinion of the District Court), that the act applies to cases where injury has been caused, without the "privity or knowledge" of the owner of the vessel in fault, by one ship to another, by maritime collision; and (in accordance with the opinion of the Circuit Court), that a Court of Admiralty cannot be so impotent, that in a most important class of cases, the Act, if it applies, cannot be effectually carried out.

GEORGE B. HIBBARD,
For Appellant, Buffalo, N. Y.

Hoggson & Robinson, Law Printers, 297 Chapel Street, New Haven.

Supreme Court,

OF THE UNITED STATES.

THE NORWICH AND NEW YORK
TRANSPORTATION COMPANY,
APPELLANTS AND DEFENDANTS,

vs.

WILLIAM A. WRIGHT, SAMUEL HEMINGWAY, WILLIAM BETSWORTH, WILLIAM U. ROBERTSON, ALBERT V. ELDREDGE, HORATIO NICHOLS, ROBERT FRANCIS, VAN BRUNT & SLAGHT, DAN SMITH, J. LUDINGTON & Co.,
APPELLEES AND LIBELLANTS.

Appellees' Brief

BRIEF.

This is an appeal from a decree of the Circuit Court for the District of Connecticut affirming a decree of the District Court for that District condemning the defendants to pay to the libellants the damages suffered by them, as owners of the Schooner General S. VanVliet and her cargo, by reason of a collision with the Steamboat City of Norwich, of which the defendants were owners, in Long Island Sound, on the 18th day of April, 1866.

The libel is *in personam.*

The following facts are not in dispute:

That the Schooner, bound for New Haven, was beating down the Sound with a northeasterly wind, and, at the time of the collision, was on her starboard tack, heading at nearly right angles with the course of the Steamer:

That the Steamer, bound up the Sound for New York, and heading a westerly course, was under her usual head of steam, going at the rate of about twelve miles an hour.

That the Schooner saw the Steamer's lights when a mile or two distant, and kept her course without alteration:

That the Steamer did not see the Schooner until it was too late for her to avoid the collision:

That the Schooner was so injured by the collision that she subsequently, in a few hours, sunk, and, with her cargo, was totally lost; and that the Steamer, in consequence of her injuries, took fire and also sunk; but her hull was subsequently raised and taken to Brooklyn in the Eastern District of New York.

There is some conflict of evidence as to the weather—its condition for seeing lights—but the Answer admits (Record p. 18) that " a steamer's lights, if properly " trimmed and burning, could be seen a mile or so," and the pilot in charge of the Steamer at the time of the collision testifies, that ordinary lights, on an average of a vessel's lanterns, were seen from a mile and a-half to two miles. (p. 115.) Other witnesses for the defendants, much relied on for another purpose, testify " that from the Steamer Electra they actually, and " with " the naked eye," saw the sails of the Schooner, just before the vessels collided, when she was three-quarters of a mile off. pp. 158, 159.

And another (p. 153) professes to have seen her with a glass which increased the natural power of the eye one-quarter, when she was *two miles off.*

But the important and controlling issue of fact is upon the question whether, at the time of collision, the Schooner had her starboard green light burning, so that the Steamer, if properly attentive, could have seen her in time to have kept out of her way, as in the relative situation of the vessels she was, by the statutory rules of navigation, bound to do.

This issue has been found against the Steamer by both the District and Circuit Courts for the Connecticut District, and by the District Court for the Eastern District of New York.

Judge Shipman's opinion, *post.*
Judge Woodruff's opinion, *post.*
The City of Norwich, 3 Ben. 575.

After the defendants took their appeal from the final decree of the District Court, they, by agreement of the parties, were allowed to file in Court, as a part of the record prior to said final decree, (p. 24,) a motion to the following effect:—that, inasmuch as the freighters and owners of the cargo of the Steamer held claims against the Steamer on their contract of affreightment, to an amount, with the sum decreed to the libellants, exceeding the value of the Steamer and her pending freight, and had instituted proceedings *in rem* in the Eastern District of New York for the enforcement of such claims, the defendants should be allowed, in this action, to show the damages sustained by such freighters as well as these libellants, to the end of apportioning among them all the sum for which the defendants, as owners of the Steamer, might be liable to pay, according to the Act of Congress of March 3, 1851, limiting the liability of ship owners.

The District Court denied the motion, and its action was affirmed by the Circuit Court.

Judge Shipman's opinion, Record p. 128.
Judge Woodruff's opinion, post p.

POINTS.

FIRST. The collision was caused by the negligence of the Steamer in not seeing the Schooner in time to clear her.

"If two ships, one of which is a sailing ship and "the other a steamship, are proceeding in such direc-"tions as to involve risk of collision, the steamship "shall keep out of the way of the sailing ship." Sailing Regulations, U. S. Stat., April 29, 1864.

"The obligation resting on the sailing vessel is "passive rather than active, the duty to keep on "her course."

The Fannie, 11 Wall. 238.

The only excuse offered by the Steamer for not seeing the Schooner, and keeping out of her way, is that the Schooner had no adequate starboard light to indicate her presence.

I.

But this question having been passed upon, and the fact found in favor of the Schooner by both the District and the Circuit Courts, this Court will not readily reverse such a decision when the only error complained of is in weighing conflicting testimony.

The Quickstep, 9 Wall. 665.

The Grace Girdler, 7 Wall. 196.

II.

The fact that the Schooner had an adequate light is clearly proved.

I. Although their answer (p. 11) denies that the Schooner had any lights burning which could be seen "any distance whatever," the defendants must now concede that she did have a green starboard light burning, which could have been seen at *some* distance.

For toward the close of their case the Captain of the Steamer, Daniel B. Sturges, was called by them as a witness, and he testified (pp. 105, 108,) that, after the collision, he went on board the Steamer Electra, and, about six o'clock in the morning, while the Electra was laying about abreast the Schooner, on her port side, a little forward of her beam, he *saw her green light burning*—but "very faint"—he "should not suppose it could be seen over five hundred feet."

The case, therefore, as presented by the defendants, is narrowed down to this question—

Was this light thus seen by their Captain in the starboard fore-rigging of the Schooner at six o'clock in the morning of the 18th, burning brightly at ten minutes to four o'clock, the time of the collision?

In weighing the testimony of this witness his peculiar interest cannot be disregarded.

Now the libellants confidently submit that any vessel's *green* light, seen under the circumstances in which Capt. Sturges saw this light, must, even to the vision of an entirely disinterested party, necessarily appear "faint" in contrast with the appearance of the same light in a dark night with a clear atmosphere.

1. (1.) The sun was three-quarters of an hour high. It was "broad daylight." pp. 184, 189.

(2.) The weather at that time was "foggy." Objects could not be seen over a quarter of a mile. p. 191.

(3.) From the position of the Electra on the port side of the Schooner those on board of the Electra could have had but a transient view of the starboard fore-rigging of the Schooner, as the Steamer sheered of to take her course up the Sound.

(4.) And they were distant several hundred feet from the Schooner. pp. 188, 189.

2. But if the light was "faint" at this time, the inference certainly is that it could not have been faint two hours and more before.

Its faintness could only have been caused by a failure of the supply of oil, or by the wick being crusted.

It would not have been strange, perhaps, if the shock of the collision had induced the operation of these causes—but these causes certainly could not have been operating over two hours without extinguishing the light.

II. But the evidence adduced by the libellants on this point is of unusual strength.

In the first place: of those on board the Schooner.

Gustave Peters, (p. 90,) was the cook who had charge of the wicking and other preparation of the lamps.

Capt. William A. Wright, (pp. 38, 39, 40,) was the master of the Schooner, and in charge of the deck at the time of collision.

Daniel Patience, (p. 58,) was the wheelsman, and George Mullenhorf, (p. 75,) the look-out at the time of the collision.

Minor F. Wright, (p. 105,) the mate, and Peter Farn, (p. 62,) and H. Rodick, (p. 87,) sailors, were of the watch below, but were brought on deck by the collision.

And these six witnesses unite in the positive and unqualified testimony that the lights, properly set, were burning brightly at the time of the collision.

The lanterns, and the kind of oil, had been used by Capt. Wright ever since the law came in force, and in the longest winter nights had burned brightly from sun-down to daylight.

Capt. Wright, pp. 38, 39, 40.

This evidence receives powerful support from the presumptions.

1. That Capt. Wright, being an experienced and intelligent navigator, familiar with the requirements of the law, and capable of fully appreciating the importance of those requirements in the navigation of his vessel—a part owner of the Schooner, which was a new and costly vessel—would have been careful to provide his vessel with everything necessary to furnish her with the regulation lights.

2. That Capt. Wright being on deck, and seeing the Steamer approaching in the direction of the Schooner, with ample time for the purpose, would have ascertained whether his lights were properly burning, and remedied the defect if any existed.

And this examination, he says, was, in fact, made. p. 41.

In the second place: this evidence is corroborated by the reliable testimony of other witnesses, to whom not even the bias ordinarily discovered in controversies of this character can be imputed.

1. Rufus E. Hine, mate of the schooner Chieftain, saw the lights of the Schooner two or three miles distant, as she was making her last tack—about twenty-five minutes before the collision—and they were burning brightly.—R. E. Hine, p. 98.

William R. Merrihew, master of the Chieftain, saw the Schooner's lights at the same distance during his watch—from eight to twelve o'clock. p. 110.

The Van Vliet was well known to the Chieftain. They were both of and bound to the same port, and they started and intended to keep in company down the Sound.

2. But the evidence given by the pilot and wheelsman of the Steamer Elm City, a Steamer bound from New Haven to New York, which passed the Schooner about an hour after the collision, should be, of itself, conclusive on this point.

The Elm City came in sight of the Schooner at about ten minutes to five o'clock. She was going at the rate of fifteen or sixteen miles per hour—having left New Haven late. "It was "daybreak, between daylight and dark—a bad "time to see lights at that time in the morning—"at that time you could see the vessel herself, "and the lights at the same time." pp. 28, 32, 33.

But when the Elm City was at a distance from the Schooner sufficient not only to clear her, but after sheering clear of her to haul up to her again, the green light in the starboard fore-rigging was plainly visible to both the pilot and the wheels-man.

"We saw a green light on the starboard "fore-rigging, and the hull of the Schooner soon "after."

Peter Albert, p. 35.

"I saw the green light in the starboard fore-"rigging burning brightly."

John E. Bowns, p. 28.

"If it had been a bad light it would not "have been seen at all. The same light, clear "weather, might have been seen two or three "miles."

Peter Albert, p. 48.

From this evidence the fact is incontestible that one hour after the collision, with the weather worse certainly for the purpose than at the time of the collision, the starboard light of the Schooner was sufficient to enable a Steamer going at the rate of fifteen or sixteen knots an hour to discover her, and keep out of her way without the slightest difficulty.

III. Against this accumulation of evidence the defendants bring:

1. The depositions of Capt. Nye and other officers of the Steamer Electra, who testify that after the collision that Steamer lay within a few hundred feet "of the Schooner, and they "did not see" any light in her rigging; and,

2. The testimony of the pilot, (p. 153,) wheelman (p. 156,) and look-out (p. 159,) on board the same Steamer, who testify that they saw the Schooner almost at the moment of the collision, at the distance of three quarters of a mile, the pilot says *two miles*, (p. 153,) and did not see any light on her, and yet immediately after the collision, when the Electra

was in the same position in which Capt. Nye says that. he "did not see" any light, did see in her starboard fore-rigging a green light although it was "dim," and the witness "should not think it could "be seen for half a mile." (p. 150.)

3. The testimony of the look-out, and others on the deck of the Norwich, who deny that there was any side-light whatever on the Schooner.

Respecting this testimony we say:

(1.) Not one of these witnesses first mentioned places the Electra in such a position relative to the Schooner that a light set in the starboard fore-rigging of the Schooner, with the regulation screens, could have been seen from on board the Electra. The port light was covered by the head sails of the Schooner. (p. 45.)

But if the light could have been seen from the Electra, the fact that these witnesses do not recollect to have seen it, only shows that it is not difficult for a person to remember seeing a vessel without remembering that she carried a light. For the light was certainly there. And it certainly was seen by Capt. Sturges at the distance of these witnesses from the Schooner. But they had no other object in looking at the Schooner than to see if it was possible to save her. The character of her light, or whether she had a light or not, was not a matter of thought with them at that time.

With Capt. Sturges it was different. The responsibility of this disaster was upon his mind. He looked for a light. The character of his look-out, and the fault of his Steamer depended upon it. He undoubtedly hoped that none would appear. And when it did appear it is perhaps not surprising that it seemed "faint."

(2.) The testimony of the three other witnesses from the Electra is more remarkable.

One of them, the pilot, Geo. F. Nye, swears (p. 153,) that he saw the Schooner some minutes before the collision, *when she was two miles off*, by the aid of an opera-glass, which increased the natural power of the eye one-quarter. According, therefore, to this witness, the Schooner, without any light, could at that time have been seen by the naked eye at a distance of a mile and a-half. Of course this is incredible. It is so incredible as justly to subject the testimony of this witness to the gravest suspicion. For he has said nothing which he did not design to say. If he saw the Schooner when he says he did, she must have been two miles off. And he has certainly given his glass all the power it was entitled to, especially on such a night as the night in question confessedly was. To the entire rejection of this testimony as worthless, there is but one alternative. If the witness saw the Schooner when he swears he did see her, he must have seen her *by her light*.

The two other far-sighted witnesses from the Electra claim to have seen her *with the naked eye*, just as the collision occured, when from three-quarters of a mile to a mile distant. The defendants in the Court below volunteered, for the benefit of these men, the theory that they were enabled to see the Schooner at this time by the reflection of the steamer's lights upon her sails. Although this did not occur to the witnesses, it is, nevertheless, certainly true, that if they saw the Schooner at the time they swear they did, she must have been enveloped in the white five-mile light of the Steamer, throwing its light over an arc of twenty degrees. But it follows of course that no light of the Schooner could have been seen under those circumstances—especially as the witnesses place the Electra " right aft of the City of Norwich."

Now these witnesses further testify, that although they did not see any light on board the Schooner when three-quarters of a mile distant, they yet did see her starboard green light (very "dim" of course) when passing the Schooner immediately after the collision.

It is altogether improbable that if the sails of the Schooner could have been seen with the naked eye at the distance stated, a light such as one hour later was seen from the Elm City, and two hours later was seen by Capt. Sturges, should not have been visible with the aid of the strong glass through which George F. Nye claims to have been looking.

But it was impossible for any one on board the Electra to have seen the Schooner's starboard light in the position in which Capt. Nye of the Electra places her immediately after the collision. (p. 188.) It is a charitable construction, therefore, upon the testimony of these witnesses to suppose that the green light of the Schooner was near by them when young Nye was looking at her through the glass, and not when the Schooner lay to the northward of the Electra.

(3.) But the evidence of these last mentioned witnesses completely discredits the testimony of the look-out and others on the deck of the City of Norwich.

The denial of the Norwich look-out that there was any light whatever on the Schooner, except a hand lantern on deck, can only be harmonized with this evidence from the Electra, of the existence of a side-light, which confessedly could have been seen a considerable distance, by the fact that this look-out was so suddenly roused into a knowledge of the proximity of the Schooner that the few seconds which elapsed before the collision, gave him neither time nor opportunity to notice whether she had any lights or not. It was too sudden for him to give any alarm. "I saw him jump round "about the time I saw the vessel." H. L. Tracey, (p. 119.)

IV. The libellants therefore insist that they have proved, beyond any reasonable question, that the Schooner was provided with lights in every respect answering the requirements of the Statute.

But, in conclusion, they deny that, if their light had fallen short in strength of the exact requirements of the Statute, they should therefore be held in fault. The question of fault in this respect is not to be settled by the photometer. If a vessel has a light which, in a given case, is sufficient to warn the approaching vessel of its position, it cannot be held in fault. We do not deny that when a collision is caused by the neglect to keep a light of the strength perscribed by Statute, the negligent vessel is justly chargeable with the consequences. But no such case can be claimed here. The fact that the light of the Schooner was strong enough to warn the Elm City of her position, and enable that Steamer to keep out of her way, is conclusive upon the fact that the character of the light did not cause or contribute to the collision. And the fact that the look-out of the Steamer did not see the Schooner until the two vessels were within three or four hundred feet of each other, (p. 115,) when if he had been awake and attentive, he could not have failed to discover every part of the vessel three times that distance off, is equally conclusive to show that any power of light would have been thrown away upon him. The parties in the pilot-house have the excuse, such as it is, that they relied upon the look-out for the warning of any approaching danger, but in no aspect of the facts can they be cleared of some share in the responsibility of this disaster.

V. If the defendants set up in their defense that the weather was "bunchy," that is with bunches of low fog occasionally settling down close to the water and then rising, the theory, if justified by the proof, would not aid them. It would only call for greater vigilance on their part, and clearly render their speed of twelve knots per hour reckless.

The James Adger, 3 Blatch. 515.

SECOND. The Court below properly refused to allow the owners of the offending Steamer to put in proof of the claims of its freighters for the purpose of reducing their liability to the libellants.

I.

The Act of March 3, 1851, does not apply in any of its sections to a loss that " may happen to any other ship " or vessel, (than the owner's vessel) or to any goods, " wares, or merchandize or other thing being on board " of any other ship or vessel."

The words " loss, damage, or injury by collision," in the 3d section, are to be construed by the context, and relate only to the property to which the other branches of the section relate, that is, property " shipped, or put on board such ship or vessel."

The Act is as follows:

SEC. 1. No owner or owners of any ship or vessel shall be subject or liable to answer for or make good to any one or more person or persons, any loss or damage which may happen to any goods or merchandize whatsoever, which shall be shipped, taken in, or put on board any such ship or vessel, by reason or by means of any fire happening to or on board the said ship or vessel, unless such fire is caused by the design or neglect of such owner or owners: *Provided*, That nothing in this Act contained shall prevent the parties from making such contract as they please, extending or limiting the liability of ship-owners.

SEC. 2. If any shipper or shippers of platina, gold, gold dust, silver, bullion, or other precious metals, coins, jewelry, bills of any bank or public body, diamonds or other precious stones, shall lade the same on board of any ship or vessel, without, at the time of such lading, giving to the master, agent, owner or owners of the ship or vessel receiving the same, a note in writing of the true character and value thereof, and have the same entered on the bill of lading therefor, the master and owner or owners of the said vessel shall not be liable, as carriers thereof, in any form or manner. Nor shall any such master or owners be liable for any such valuable goods beyond the value and according to the character thereof so notified and entered.

SEC. 3. The liability of the owner or owners of any ship or vessel, for any embezzlement, loss or destruction, by the master, officers, mariners, passengers or any other person or persons, of any property, goods or merchandise, shipped or put on board of such ship or vessel, or for any loss, damage or injury by collision, or for any act, matter or thing, loss, damage or forfeiture, done, occasioned or incurred, without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner or owners respectively, in such ship or vessel, and her freight then pending.

SEC. 4. If any such embezzlement, loss or destruction shall be suffered by several freighters or owners of goods, wares or merchandize, or any property whatever, on the same voyage, and the whole value of the ship or vessel, and her freight for the voyage, shall not be sufficient to make compensation to each of them, they shall receive compensation from the owner or owners of the ship or vessel, in proportion to their respective losses; and for that purpose the said freighters and owners of the property, and the owner or owners of the ship or vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner or owners of the ship or vessel may be liable amongst the parties entitled thereto. And it shall be deemed a sufficient compliance with the requirements of this act, on the part of such owner or owners, if he or they shall transfer his or their interest in such vessel and freight, for the benefit of such claimants, to a trustee, to be appointed by any court of competent jurisdiction, to act as such trustee for the person or persons who may prove to be legally entitled thereto, from and after which transfer all claims and proceedings against the owner or owners shall cease.

SEC. 5. The charterer or charterers of any ship or vessel, in case he or they shall man, victual and navigate such vessel at his or their own expense, or by his or their own procurement, shall be deemed the owner or owners of such vessel within the meaning of this act; and such ship or vessel, when so chartered, shall be liable in the same manner as if navigated by the owner or owners thereof.

SEC. 6. Nothing in the preceding sections shall be construed to take away or affect the remedy to which any party may be entitled, against the master, officers or mariners, for or on account of any embezzlement, injury, loss or destruction of goods, wares, merchandize or other property, put on board any ship or vessel, or on account of any negligence, fraud or other malversation of such master, officers or mariners, respectively; nor shall anything herein contained lessen or take away any responsibility to which any master or mariner of any ship or vessel may now by law be liable, notwithstanding such master or mariner may be an owner or part owner of the ship or vessel.

Sec. 7. Any person or persons shipping oil of vitriol, unslacked lime, inflammable matches or gunpowder, in a ship or vessel taking cargo for divers persons on freight, without delivering, at the time of shipment, a note in writing, expressing the nature and character of such merchandize, to the master, mate, officer or person in charge of the lading of the ship or vessel, shall forfeit to the United States one thousand dollars.

This act shall not apply to the owner or owners of any canal boat, barge or lighter, or to any vessel of any description whatsoever, used in rivers or inland navigation.

I. The mischief which occasioned this Act was the absolute liability to which the ship-owner was held to be subject *as a carrier*, by the decision in the case of the Lexington.

Judge Woodruff's opinion, *post.*

That the remedy was simply designed to meet this mischief, is manifest by the debate in the Senate on the passage of the Bill.

23 Cong. Globe, 713—718.

The Bill was vigorously opposed, and nearly every leading lawyer in the Senate took some part in the discussion.

But throughout the debate there is not a suggestion that the Bill had anything else for its object than the relief of the ship-owner from the hardship growing out of his responsibilities to the owners of his cargo.

Said Senator John Davis, of Mass.: "My friend "from North Carolina says, that it proposes to "change a system which has existed for a great "period of time. I wish only to say in reply to that, "that it is by a recent decision, some two or three "years since, that the owners of ships have compre"hended their liabilities. It is by an interpretation "and construction given to them by the Courts "below, that they now understand that if a ship "lying at the wharf in New York takes fire and "burns up without fault on the part of the owners, "they are liable as common carriers. This becomes "a very serious question, one that effects that "interest very deeply; and therefore it is that it is "necessary that the law should be changed."

Senator Phelps, of Vermont: "Now if the Sen-"ator from North Carolina, (Mr. Badger,) is right "in supposing that this bill professes to control the "contracts of the parties, why, it is wrong in prin-"ciple. The parties should be left to make their "own contracts. If this bill, however, simply "proposes to regulate the legal liability of the par-"ties in the absence of any express stipulations of "their own, then it is a bill that I should vote for.

"Mr. Hamlin: That is all it is."

Senator Hamlin was the mover, and probably the draftsman of the bill.

And the very last thing done in the Senate before passing the bill was the addition of the *proviso* "that nothing *in this act* contained shall prevent "the parties from making such contracts as they "please, extending or limiting the liabilities of ship-"owners;" clearly indicating that the ship-owner's liability to be effected by the Act was a liability growing out of his relations to those with whom he might make contracts of affreightment.

II. The construction of the Act clearly evidences the same design.

It is made up from the English Statutes of 7 Geo. 2 (1734), 26 Geo. 3 (1786) and 53 Geo. 3 (1813) and the Massachusetts Statute of 1818 and the Maine Statute of 1821.

Abbott on Ship. pp. 396, 397, 398, 389.

Rev. Stat. Mass. 1835 p. 295, c. 32.

[illegible] Stat. Maine, 1821 p. 92, c. 14.

Many of its provisions are taken bodily from those Statutes, and their language cannot be interpreted without recurring to the history of that legislation.

It should be premised that the Act is not only in derogation of common law, but is "an intrenchment, "so far as it goes, on the general principle of every "man being entitled to recover the whole of his loss "from the individual who inflicts it." *The Benares*, 1 Eng. L. & Eq. 639, "and therefore must not be "extended beyond the fair import of its language."

Morewood vs Pollock. 18 Eng. L. & Eq

Before the enactment of the Statute 7 Geo. 2, the law of England—the common law—undoubtedly held the carrier by water to the same responsibilities as the carrier by land.

The general maritime law of Europe was different. For the wrongful acts of the master, "that is, acts "of willful and intentional wrong, and not of mere "unskillfulness and incapacity," the liability of the owner was limited to the interest he had in the ship.

The Rebecca, Ware, 198, 208.

The decision in Boucher *vs.* Lawson, Rep. temp. Hardwicke, p. 85, that the ship-owner was answerable for an embezzlement of the cargo by the master, occasioned the Stat. 7 Geo. 2.

Abbott on Ship. 395.

Statute 7 Geo. 2.

It provided: "That no person or persons who is, "are, or shall be owner or owners of any ship or vessel, "shall be subject or liable to answer for or make "good to any one or more person or persons, any loss "or damage by reason of any embezzling, secreting "or making away with, by the master or mariners, "or any of them, of any gold, silver, diamonds, "jewels, precious stones, or other goods or merchandize, which from and after the 24th day of June,

3 W Rob/105-106

"1734, shall be shipped, taken in or put on board "any ship or vessel, or for any act, matter or thing, "damage or forfeiture done, occasioned or incurred "from and after the said 24th day of June, 1734, "by the said master or mariners, or any of them, "without the privity or knowledge of such owner or "owners, further than the value of the ship or vessel, "with all their appurtenances, and the full amount "of the freight due or to grow due, for and during the "voyage, wherein such embezzlement, secreting or "making away with as aforesaid, or other malversation of the master or mariners shall be made, "committed or done; any law, usage or custom to "the contrary thereof, in any wise notwithstanding."

The second section provided for an apportionment of the value of the ship among the several *freighters*, if their aggregate losses exceeded the value of the ship and freight, and provided a mode for its distribution by Bill in Equity.

The third section provided against collusion, and for the payment of the value into Court.

The fourth section preserved the remedy against the master, &c., for any embezzlement, &c., or "for "any fraud, abuse or malversation of and in such "master and mariners respectively."

Abbott on Shipping, 396.

This Statute assimilated the law of England to what Judge Ware supposes the general maritime law of Europe to have been. It limited the owner's liability in respect of the *wrongful* acts of the master and mariners, such as "embezzlement or "*other malversation.*"

"This act is as strong as possible, and was meant "to protect the owner against all *treachery in the* "*master or mariners.*"

Buller J. *Sutton vs. Mitchell*, 1 Term 20.

It is also clear, and especially by the preamble, that the Statute related only to wrongful acts affecting the property *on board the vessel,* and that the words "act, matter or thing, damage or forfeiture "done, occasioned, or incurred by the master or "mariners," must be construed with reference to the qualification previously stated—that is in respect of the goods or merchandize "shipped, taken in, or "put on board" the vessel.

It was passed for the protection of the ship-owner as a carrier. Freighters, and owners of property on board his vessel, but no one else, were affected by the limitation it placed on his liability.

Statute 26 Geo. 3.

The Statute of 26 Geo. 3 (1786) followed the decision in Sutton *vs.* Mitchell, and by it the liability of the ship-owner was still further limited.

1. In all cases of robbery, although the master or mariners were not concerned in it.

2. In all cases of robbery, embezzlement, &c., of gold, silver, &c., where the nature and value of the shipment had not been declared in the Bill of Lading.

3. In all cases where loss or damage may happen to any goods or merchandize whatsoever, which shall be *shipped, taken in, or put on board* any such ship or vessel, by reason or means of any fire happening to or on board the said ship or vessel.

Abbott on Ship. 397, 389, 390.

This Statute, as the previous one, regarded the ship-owner only as a carrier. It limited his liability when his freighters lost their goods by robbery or fire on board his vessel. But if his vessel had by negligence, set fire to another vessel and her cargo, the Statute did not relieve him from his common law responsibility.

It is also certain that his liability was not limited by this Act in case of any loss happening, even to his own freighters, by collision.

Statute 53 Geo. 3.

The Statute 53 Geo. 3, (1813), which was next passed, made important innovations.

It specifically "contemplated two descriptions of "losses, one to the cargo laden on board the ship, "and the other to a disconnected ship and her cargo."

Wilson *vs.* Dickson, 2 B. & Al. 12.

It also, for the first time, contemplated acts *omitted* to be done, "neglects," as well as acts to be done, without the fault or privity of the owner.

Its main provision was as follows:

"That no person or persons who is, are, or shall "be, owner or owners, a part owner or part owners, "of any ship or vessel, shall be subject or liable to "answer for or make good any loss or damage "arising or taking place by reason of any act, *neg-"lect*, matter, or thing done, *omitted* or occasioned, "without the fault or privity of such owner or own-"ers, which may happen to any goods, wares or "merchandize, or other thing laden or put on board "the same ship or vessel after the 1st of September, "1813, or which, after the said 1st of September, "1813, *may happen to any other ship or vessel, or to "any goods, wares or merchandize or other thing, "being in or on board of any other ship or* vessel, "further than the value of his or their ship or ves-"sel and the freight due, or to grow due, for and "during the voyage, which may be in prosecution "or contracted for, at the time of the happening of "such loss or damage."

Abbott on Ship. p. 398.

No language can be clearer than that which it was here deemed necessary to employ in extending the limitation to other property than that on board the ship.

It will be observed that this extension was not in respect of all property, but only of that specifically mentioned—some other ship, or the goods on board some other ship. The common law liability remained as to all other property.

It was not until after, and in full view of all this legislation by Great Britain, that any Act was passed in this country limiting the common law liability of the shipowner to any extent.

Statutes of Mass. and Maine.

The Statutes of Massachusetts and Maine comprise, it is believed, all the legislation in the United States before the Act of Congress of 1851, and, as the Act of 1851 is copied largely from them, their construction will throw light upon the question now being considered.

Both of these Statutes ignore the Act of 53 Geo. 3.

The first section of the Maine Statute is almost a transcript of the corresponding section of the Stat. 7 Geo. 2.

The first section of the Massachusetts Statute is precisely to the same effect, its phraseology (in the revision of 1835) being somewhat changed, the words "embezzlement, loss or destruction" taking the place of "any embezzling, secreting, or making "away with," in the English and Maine Statutes.

Both statutes relate only to the loss by embezzlement or other malversation of the master or mariners of the property on board the ship.

The words which are copied into both of them from the English Statute, "any act, matter or thing, "damage or forfeiture done, occasioned or incurred "by the said master or mariners without the privity "or knowledge of such owner," can relate, as they manifestly do in the English Act, only to acts done affecting the property on board the ship.

For, otherwise, the construction cannot be avoided that the limitation extends to every act so done, affecting all property generally and wherever situated, whether on shipboard or on shore—which certainly could never have been designed.

And if it was not designed by the makers of these statutes to restrict the limitation to cases where the property on board the vessel might be injured, why was the Act 53 Geo. 3 so studiously passed over, and the language of the old Act so closely copied?

Act of Cong. March 3, 1851.

Now it was out of these materials that the Act of Congress of March, 1851, was framed.

The manner of its construction will further elucidate the design of its makers.

Section 1, as drawn, was a literal transcript of a section of Stat. 26 Geo. 3. The clause, "unless such "fire is caused by the design or neglect of the owner," and the *proviso* before referred to, were added, by way of amendment, in the Senate.

It, obviously, relates only to the property on board the owner's ship.

Section 2, is also taken, with some change of phraseology, from the Stat. 26. Geo. 3, and relates only to the property in charge of the carrier.

Passing over Section 3, for the present.

Section 4, is taken, mainly, from the Stat. 7 Geo. 2, and, its copy, the Maine Statute, where it only applied to the freighters *and proprietors* of any *such* goods—that is goods on board the carrier's vessel.

The provisions of this section will be more particularly examined hereafter. But the absence from the section of any provision for a surrender of the vessel, or the doing of anything else, "in compliance with the requirements of the Act," for the benefit of any other person injured than the freighters or owners of goods on board, is evidence of the strongest character that no one else was intended to be affected by the limitation of the Act.

Section 5, is taken from the Maine Statute.

Section 6, is taken substantially from 7 Geo. 2, and the Massachusetts Statute—where it had no relation to any other offense than in respect of the goods on board the ship.

Section 7, is the only one of these sections which has any connection with the Act 53, Geo. 3. Its last clause was taken, substantially, from that Act, but it does not concern the present question.

These sections therefore, it must be conceded, contain nothing whatever to warrant the construction that the Act has within its scope, losses happening "to any other ship or vessel, or to the goods, "wares or merchandize being in or on board of any other ship or vessel."

Is there anything in *Section* 3, to justify such a construction?

Striking from this section the words "or for any "loss, damage or injury by collision," the section remains, substantially, as its corresponding section in 7 Geo. 2, and the Maine and Massachusetts Acts, with the amendment of 26 Geo. 3.

That is, it would limit the owner's liability, in all cases:

> 1. Of "any embezzlements, loss or destruction "by the master or mariners, or any other person, "of the goods on board."
>
> 2. Of "any act, matter or thing, loss, damage, "or forfeiture done, occasioned or incurred, "without the privity or knowledge of such "owner or owners."

But neither of these cases would cover a loss to the goods on board by collision. They relate, as we have seen, to acts of malversation.

And, therefore, when it was determined in the drafting of this Act, to extend the limitation of the owner's liability as a carrier to the case of collision, rarely the result of willfulness, and sometimes not of negligence, it became necessary to insert the special words in question.

But no new kind of property was introduced as the subject of the newly provided for loss, damage or injury. It was the addition of a new cause of injury to the same property, that before the addition might have been injured by the embezzlement or other acts of malversation to which the section applied—that is the property on board the owner's ship.

No such addition could, by any rule of construction, change the general subject of the Act.

But, upon the construction claimed by the defendants, the scope of the entire section, and, indeed, of the entire Act, is changed by this insertion. For if these words are not restricted by the qualifications of the "loss or destruction" just before described, the words following cannot be, and the limitation must be held to extend to every act, matter, or thing done, occasioned or incurred, to any property whatsoever, whether on the sea or on shore.

But the framer of the Act could have had no such object.

He had the Act 53 Geo. 3 before him. He saw that it provided in the clearest language for a collision causing loss to any other ship and the goods on board of it, and, as the draftsman of the Massachusetts and Maine Acts had done before, he ignored it.

Could there possibly be stronger evidence of his intention that the proposed bill should have no such operation, but that it should be limited in its application, as the Acts upon which it is directly based are limited, to losses, whether occuring by embezzlement, collision, or any act without the owner's privity, happening to the goods shipped and put on board the owner's vessel?

II.

But if the third Section of the Act shall be construed as limiting the owner's liability in respect of losses to another ship, it is submitted, that the Act does not require the party suffering such loss to share with the freighters of the offending ship in the value of the owner's interest, and does not interfere with the assessment of his damages, in any way, if they do not exceed the limit of the owner's liability.

It is only by the 4th Section of the Act that any apportionment is provided for.

1. The words "*such* embezzlement, loss or de- "struction" in this section refer to the "embezzle- "ment, loss or destruction by the master, &c., mentioned in the preceeding section.

This part of the section is a literal copy of the Massachusetts Act before referred to.

In that Act, these words, "embezzlement, loss or "destruction," were substituted for "embezzlement, "secreting, or making away with," in the Statute 7 Geo. 2, but the thing—the cause of limitation—described was the same. It was a "loss or destruction of the goods on board by some act of malversation of the master or mariners."

But neither of these cases would cover a loss to the goods on board by collision. They relate, as we have seen, to acts of malversation.

And, therefore, when it was determined in the drafting of this Act, to extend the limitation of the owner's liability as a carrier to the case of collision, rarely the result of willfulness, and sometimes not of negligence, it became necessary to insert the special words in question.

But no new kind of property was introduced as the subject of the newly provided for loss, damage or injury. It was the addition of a new cause of injury to the same property, that before the addition might have been injured by the embezzlement or other acts of malversation to which the section applied—that is the property on board the owner's ship.

No such addition could, by any rule of construction, change the general subject of the Act.

But, upon the construction claimed by the defendants, the scope of the entire section, and, indeed, of the entire Act, is changed by this insertion. For if these words are not restricted by the qualifications of the "loss or destruction" just before described, the words following cannot be, and the limitation must be held to extend to every act, matter, or thing done, occasioned or incurred, to any property whatsoever, whether on the sea or on shore.

But the framer of the Act could have had no such object.

He had the Act 53 Geo. 3 before him. He saw that it provided in the clearest language for a collision causing loss to any other ship and the goods on board of it, and, as the draftsman of the Massachusetts and Maine Acts had done before, he ignored it.

Could there possibly be stronger evidence of his intention that the proposed bill should have no such operation, but that it should be limited in its application, as the Acts upon which it is directly based are limited, to losses, whether occuring by embezzlement, collision, or any act without the owner's privity, happening to the goods shipped and put on board the owner's vessel?

II.

But if the third Section of the Act shall be construed as limiting the owner's liability in respect of losses to another ship, it is submitted, that the Act does not require the party suffering such loss to share with the freighters of the offending ship in the value of the owner's interest, and does not interfere with the assessment of his damages, in any way, if they do not exceed the limit of the owner's liability.

It is only by the 4th Section of the Act that any apportionment is provided for.

1. The words "*such* embezzlement, loss or de-"struction" in this section refer to the "embezzle-"ment, loss or destruction by the master, &c., mentioned in the preceeding section.

This part of the section is a literal copy of the Massachusetts Act before referred to.

In that Act, these words, "embezzlement, loss or "destruction," were substituted for "embezzlement, "secreting, or making away with," in the Statute 7 Geo. 2, but the thing—the cause of limitation—described was the same. It was a "loss or destruction of the goods on board by some act of malversation of the master or mariners."

2. But, however this may be, it is clear that no provision is made by this section for any *apportionment* among any other persons than the freighters and owners of the property on board the owner's ship.

It is claimed that by "owners of any property "whatever," persons distinct from freighters are intended, and that the expression was designed to comprise owners of the injured ship.

A reference to the statutes from which this part of the section was taken will show the error of this claim.

The 2d section of the Masschusetts Statute, from which this was copied, is taken from the Statute 7 Geo. 2, with only a change of phraseology.

The corresponding section of Statute 7 Geo. 2, (and also of the Maine Act of 1821), is as follows:

"That if several freighters, *or proprietors*, of any "*such* goods, wares or merchandize, or any property "whatever, shall suffer loss or damage, by any of "the means aforesaid, in the same voyage, and the "value of the ship or vessel, &c., shall not be sufficient, &c., then such freighter or *proprietor* shall "receive satisfaction thereout in average, &c., &c."

The "*such* goods or property" here referred to are manifestly the "goods, wares and merchandize, or "any property whatsoever," mentioned in the preceeding section, and which are there identifieda s the property "*which shall be shipped, taken in, or* "*put on board any ship or vessel.*"

And it was in respect of this property that the proprietor, or "owner," even though not, strictly, a freighter, was entitled to his average.

And no one else but these freighters and proprietors could make any claim to the average, under this provision.

3. The provision for a surrender of the vessel to a Trustee is "for the benefit of *such* claimants," that is the claimants just referred to—the freighters or owners of the property put on board the owner's ship.

Although there may be several *claimants*, all may not prove themselves "legally entitled thereto." But one may, perhaps, bring himself within that requirement, and, therefore, the Trustee is to hold the property for the "*person* or persons" who may eventually make good their claims.

This construction has been applied to the 4th section in the only cases where it has come under review.

Walker vs. *Boston & Hope Ins. Co.*, 14 Gray, 288.

Spring vs. *Haskell and others*, 14 Gray, 309.

Barnes, et al. vs. *Steamship Co.*, 25 Leg. Int. 196.

S. C., 6 Phila. (H. E. Wallace,) 479.

In the last named case, tried before Judge Grier in the U. S. Circuit Court for Pennsylvania, in 1868, the libellant's Schooner had been sunk by collision with a Steamer, which was held to be in fault.

The Steamer was also sunk, and abandoned to the underwriters.

The policies of insurance were attached, first, by the owners of the Schooner, and, subsequently, by the owners of the cargo on board the Steamer, in the same Court. The money was paid into Court, but it was not sufficient to satisfy the decrees obtained in both suits.

Judge Grier held, as "the result of a careful examination of the case, and the authorities cited," that the 4th Section of the Act had no applicability to either of the claims—that the owner of the Schooner had a right to priority of payment out of the fund, and the residue, if any, was to be applied to the owners of the Steamer's cargo.

III.

But if any such right of apportionment exists, the motion of the defendants is not "an appropriate proceeding" to enforce it.

It will be observed that the defendants are not offering to prove that they have paid to any one the value of their vessel, or any portion of it, for losses growing out of this collision—or that they have even become liable to pay that value, or any portion of it, to any one on account of such losses.

They simply propose to show that certain undetermined *claims* for damage are pending against them in another district.

Now these very claims are being resisted by the defendants on the very ground that the losses were not occasioned by collision.

The City of Norwich, 3 Ben. 575.

And the defendants have recovered judgments on their policies of insurance on the ground that they had sustained a loss by fire.

Norwich & N. Y. Trans. Co. vs. *Western Mass. Ins. Co.*, 34 Conn. 561.

Their legal position, in making this motion, is well illustrated by these facts. If, without paying a dollar into Court, and holding fast their vessel they can substantially defeat the claim of these libellants, by apportioning to them a nominal sum for damage, and can, at the same time, defeat their freighters, because their loss was not a loss by collision, and can keep in their pockets the money they have raised from the Insurance Companies because of their loss by fire—they will have accomplished what their construction of this Act would certainly justify, but what, it is safe to say, the framers of the Act could not have supposed ever would be accomplished.

This action is, simply, the ordinary libel *in personam* to recover the damages the libellants have sustained by this collision.

They have proved their loss, and the fault of the defendants' vessel, and upon this proof they are entitled to a judgment for the full amount of their loss.

They are not asking for the apportionment of any fund or the sale and distribution of any property for their benefit. There is no fund or property in Court of which they could ask any such action.

Now where is the power found to convert this simple proceeding between these two parties, of which this Court has jurisdiction only because of its jurisdiction over their persons, into a proceeding for the condemnation of property or the apportionment of a fund in which hundreds of other persons, living in various jurisdictions, may claim an interest?

The City of Norwich, 1 Ben. 97.

The Saracen, 6 Moore P. C. C. 74.

In the Courts of the United States legal and equitable claims cannot be blended in one suit.

Bennett vs. *Butterworth*, 11 How. 674.

Clearly an apportionment cannot be made without an adjudication upon each claim that may be entitled to share in the apportionment.

But how is the District Court for Connecticut to draw into its jurisdiction these claims pending in its sister jurisdiction of New York, and adjudicate upon them in Connecticut? And where is to be found, its jurisdiction over the persons entitled to make these claims by which it can pass a decree binding all parties in interest to the apportionment it may make?

The "appropriate proceeding" contemplated by the Statute is a proceeding like a Bill of Interpleader, where money is paid into Court on an admitted liability, and the claimants left to settle the proportion among themselves.

The only proceeding indicated by the Statute is of this character, by a transfer of the vessel to a Trustee for the benefit of the persons entitled thereto.

The defendants have taken no such proceeding.

The various Statutes already referred to have provided the necessary jurisdiction in this respect.

The Stat. 7 Geo. 2, provided for the filing of a bill in any Court of Equity with an offer to pay the value of the vessel, &c., into Court, "and such Court "shall thereupon take such method for ascertaining "such value as to them shall seem just, and shall "direct the payment thereof in like manner as is "now used and practised in cases of Bills of Inter-"pleader."

The Stat. 26 Geo. 3, contained the same provisions.

The Stat. 53 Geo. 3, provided more carefully for a bill in equity in the nature of a bill of interpleader.

The later English Statutes are provided with ample Chancery powers for the purpose, as clearly shown by Judge Benedict in

The City of Norwich, 1 Ben. 89.

17 & 18 Vict. c. 104.

25 & 26 Vict. c. 63.

The Masschusetts Statute provided for a Bill in Equity.

The Maine Statute vested the "Supreme Judicial "Court with full power and authority to entertain, "hear, determine and decree in such cases, in the "same manner as Courts of Equity would have authority to do."

But the Act of 1851 gives no such jurisdiction to the Courts of the United States.

IV.

But, finally, even if the Act of 1851 had the scope claimed for it by the defendants, and had conferred upon the District Court the equitable powers given to the English Courts by the Act 53 Geo. 3, it could not be now used to take away from these libellants the priority they have acquired by their judgment to be paid in full.

The decree of the District Court condemning the defendants to pay the libellants their damage, with reference to the Commissioners, was passed at the November Term, 1866. (Record p. 12.)

It was not until long after this decree, and after the report of the Commissioner, and pronouncing of the final decree, viz: April 23, 1867, that the defendants undertook to defeat the libellants' recovery in full, by their motion to apportion the damage. (pp. 13, 14.)

It was then too late. The libellants had by the decree in their favor acquired a right, as the vigilant suitor, which could not be defeated in favor of an other who had lain by and allowed them to run all the chances of an expensive litigation, and then only come in to reap an advantage which he had no hand in gaining.

And it would be equally inequitable to allow the defendants to accomplish the same end by any motion on their part.

Their liability is the same whether the libellants are paid in full, as the *prior petens*, or not. They have kept the libellants in Court as long as possible, and it is only when no other resource of defeating them is left that they evidence any disposition to comply with the requirements of the Act of 1851. Their motion is manifestly not to protect themselves, but to deprive the libellants of the fruits of their successful suit.

In *The Saracen*, 10 Jur. 396 S. C., on appeal, 11 Jur. 253, 6 Moore, P. C. C. 56, the ship was condemned by an interlocutory decree at the suit of the owners of the injured vessel and of a part of her cargo, and was subsequently sold and the proceeds returned into Court.

On the same day that the interlocutory decree of condemnation was passed the owners of the remaining portion of the cargo entered their action.

But it was held that the parties who had obtained the decree could not be deprived of the benefit of such decree in favor of parties coming in afterwards.

Dr. Lushington: "If the proceedings *in rem* in this "Court are to be assimilated to those in Courts of law "and equity," (as in suits against executors,) "then, in "this case, the claimants of the bulk of the cargo must "fail in their prayer because they do not seek the aid of "this Court till a decree has been already pronounced "in favor of another party, their claims being in equal "degree."

On the appeal this judgment was affirmed as the following head-note from 6 Moore shows :

"Although in the decision of cases properly within "the jurisdiction of the Court of Admiralty equitable "considerations ought to have weight, yet that Court "has not jurisdiction to do all that a Court of equity "might do in suits instituted by persons suing either "for themselves, or in behalf of themselves and others, "for administration of assetts, or distribution of a common fund.

"Where, therefore, the owners of a vessel and part of "a cargo lost in a collision brought an action in the Admiralty Court against the damaging vessel and obtained "a decree for the condemnation of the ship, referring the "the amount of damages to the Registrar, and merchants "who were to report them ; and on the same day that "the decree was pronounced the owners of the remaining portion of the cargo brought an action against the "damaging vessel and applied to the Court to be let in "to participate rateably in the proceeds of the condemned ship remaining in the Registry, it was held :

"*First*,—That the Admiralty Court, in such circumstances, had no jurisdiction to decree a rateable sum, "and thereby take away the priority of the *prior* "*petens*, and,

"*Secondly*,—That the decree for damage and reference to Registrar and merchants was a definitive "decree."

R. H. HUNTLEY,
C. R. INGERSOLL,
Counsel.

William A. Wright and others, owners of the schooner General S. Van Vliet, &c., and her cargo, *vs.* The Norwich and New York Transportation Co., owners of the Steamboat City of Norwich.	*U. S. District Court,* *District of Connecticut.*

OPINION.

Shipman, J.

Between half-past three and four o'clock, on the morning of the 18th of April, 1866, the schooner General S. Van Vliet and the steamboat City of Norwich, collided, in Long Island Sound, seven or eight miles northwesterly of Eaton's Neck. The effect of the collision was destructive to both vessels, the steamboat soon taking fire and sinking, and the schooner afterwards going down in fifteen fathoms of water. The libellants were the owners of the schooner and cargo, and bring this suit *in personam*, against the respondents, a corporation under the laws of, and located in this State, owners of the steamboat, to recover damages for their destruction. To this libel the respondents have filed their answer. The case has been fully heard upon voluminous evidence submitted by the parties and arguments of the respective counsel, both oral and printed.

No technical questions arise on the pleading, and therefore no discussion of the respective allegations of the libel and answer are necessary. Each party charges the fault that produced the disaster upon the other, and sets out the facts in support of the charge with proper particularity.

The collision took place before daybreak. The wind was about N. E. by E., a light breeze of three or four knots. The schooner was beating down Sound, bound for New Haven, and the steamboat was bound up Sound, for New York. The speed of the schooner was, with that wind, of course, comparatively slow. The steamboat was moving at the rate of ten or twelve kuots. She was of about twelve hundred tons burthen, and the schooner was of about one hundred and eighty-five tons. At the time of collision the schooner was on her starboard tack, standing nearly north. The course of the steamboat was west by south. On these respective courses, therefore, the vessels were crossing each other's paths at nearly right angles.

The steamboat's lights were discovered on board the schooner about the time the latter went in stays to stand on her starboard tack—the one on which she was when the collision occurred. These lights continued to be observed by those on the schooner until the vessels came together, during which time the schooner's course was not materially altered.

No lights were discovered by those on the steamer, nor did they see the schooner at all until the vessels were within three or four hundred feet of each other, when the pilot of the steamboat, as he testifies, discovered her sails about three points on his port bow. He was then in the pilot house. He exclaimed "What's that forward?—port your wheel," addressing the wheelsman of the steamboat, at the same time ringing the bell to slow her, and, also, at once to back her. The wheel was hove aport as rapidly as possible, and the signal bells to the engineer obeyed promptly, but of course her speed could be checked or her course changed but very little in the three or four hundred feet by which the vessels were separated when the first order was given. The collision took place almost instantly, carrying the head of the schooner round to the westward, while the steamboat passed by her, before the headway of the latter was wholly stopped. The consequences as already stated, were of a most destructive character to both vessels. No detail of these consequences is necessary here.

There is one point, however, on which the witnesses differ, which it may be well to notice in this place, although it is not of controlling force in the case. It relates to the precise points on the hull of each, where the main blow was received. The witnesses on behalf of the libellants, who where on the schooner at the time, state that the stem of the steamboat struck her at or near her starboard cathead. On the contrary, the evidence for the respondents tends strongly to prove that the stem of their boat shot past the bow of the schooner, and that the latter struck *her* stem on, some fifty feet or more abaft her stem. I think the respondents are right on this point. But, as already intimated, this feature of the case is not of controlling importance. Whatever culpability exists, and wherever it rests, it originated and was fixed upon one or the other party a considerable time before the vessels came in contact. If the schooner had her lights burning, it was undoubtedly her duty to keep her course after she discovered the steamboat. The steamboat had a right and was bound, if she saw the schooner, to assume that the latter would hold her course. The duty being laid upon one vessel to clear another, under given circumstances, the obligation on the latter to hold her course without deviation is imperative, unless she is quite sure that the approaching vessel, whose duty it is to clear her, is ignorant of her presence and position, or has mistaken her course. The necessity of holding vessels to this rule is quite obvious. A vessel bound to clear another has a right to choose her own way of doing it. She can cross her bow, or pass under her stern, can go to windward or to leeward of her. But she can never, with any certainty or safety, adopt any maneuver to accomplish her object and discharge the duty laid on her by the law, if the other vessel is allowed to change her course at will. To be sure, each vessel has a duty to perform toward avoiding a collision, but the law having declared that one shall be responsible for the active maneuvers by which another is to be passed, also declares that the other shall not embarrass her by any movements which she cannot anticipate. Any other rule would invite, instead of tending to prevent such disasters. In the present case, it is not to be doubted that the Van Vliet saw the Norwich a considerable distance off. It is declared that the former's lights were burning brightly. Whether they were or not is to be determined hereafter. If they were, even with tolerable brightness, she was bound to assume that the Norwich saw her starboard light, and would therefore take early and effective measures to avoid her. Of the proper moment for the

Norwich to change her course, she alone was the judge, and it was not for the Van Vliet to break over the rule and change her own course, on the mere apprehension that the Norwich was approaching quite near her. The Norwich had a right to pass under her stern, and, if she chose to do so, she had a right to calculate that the Van Vliet would continue to move through the water on her then course and at her then uniform rate of speed. With the Van Vliet, say a quarter of a mile distant, standing at right angles to the course of the Norwich, the latter might safely head directly toward the former, knowing that if both vessels held steadily on their courses, the schooner would cross and clear her track before she could reach the point of intersection. Now, suppose the Van Vliet under such circumstances, upon the idle assumption that she was in danger, should starboard her helm and keep away up Sound, thus hiding her lights and keeping in the track of the Norwich ; or, with such a light wind as she had that night, should port her helm and come up into the wind, thus holding her place in the track of the rapidly approaching boat. Should a collision take place under such circumstances, the Court would be very slow to condemn the steamboat, whose calculations had been baffled and defeated by the unauthorized maneuvers of the schooner. Now, in the present case, the schooner assumed that her lights were seen by the steamer, and it was the duty of the former, therefore, to keep her course, and thus leave the latter to pass as she chose. There was nothing in the movements of the Norwich to excite alarm on the Van Vliet, until the former was so near that no change of movement of the latter would have avoided a collision. We must therefore look into the state of facts existing sometime prior to that in which the vessels had come into dangerous proximity.

It is obvious that the whole case must turn on the question whether or not the schooner had an adequate green, or starboard light, which those in charge of the Norwich might and ought to have discovered in time to avoid her. On that point I think the clear preponderance of the evidence is with the schooner, at the same time admitting that the burden of proof is on her.

I will consider first whether she had any light at all.

Those on board of her at the time state in the most positive manner that both her lights were burning brightly at the time, and even after the shock of the collision. Their testimony is full and explicit on this point. It is true that they testify under the natural pressure of their position, as parties to the disaster. But the question does not rest alone on their statement. Merrihew and Hine, captain and mate of the Schooner Chieftain, which left Hart's Island, near the head of the Sound, before dark, and when the Vlan Vliet was several miles to windward, both say they saw her lights set at dark. They knew her well. Merrihew, whose watch was on deck from 8 to 12, says that he alternately kept her green and red lights during that time, as she was on her port and starboard tacks. Hine's watch on deck was from 12 to 4, and he states that he likewise kept her lights till about the time of the collision. During all this time the Van Vliet must have been more than two miles to windward of the *Chieftain*.

About an hour after the collision, the steamer *Elm City*, bound from New Haven to New York, passed the Van Vliet. Her pilot and wheelsman both say that they saw her green light in the starboard fore-rigging—the pilot says burning brightly; the wheelsman says, pretty fair for the time of night. They state that they discovered the lights about twelve hundred feet off. These men had no connection with the damaged schooner, and their testimony is therefore free from the suspicion of bias.

Nye, the pilot, and Nickerson, the wheelsman, of the steamer *Electra*, which was in the vicinity at the time of the collision, and went to the relief of the *Norwich*, both say they saw the green light of the Van Vliet after the collision, but that it was dim. Nickerson says that he could see such a light a quarter of a mile off. Nye says he does not think he could see it a half a mile. This was just after the collision, and as the *Electra* passed the *Van Vliet* on her way to the *Norwich*. Gifford, the look-out, also saw the green light at the same time. He, too, states that it was dim. It was also seen by others later, between five and six o'clock. The conclusion that the Van Vliet had a green signal light in her starboard fore-rigging at the time that the collision took place, would seem to be clearly made out. It was placed there, according to the testimony of those on board of her, corroborated by the Captain and Mate of the *Chieftain*, early in the evening.

The only remaining question to be determined is, whether it was such a light as those on the *Norwich* might and ought to have seen. The look-out, pilot, and wheelsman of the *Norwich* all say that they saw no light whatever on the *Van Vliet*, even after they discovered the schooner, herself. It is, perhaps, not remarkable that the pilot and wheelsman did not see it after the schooner came in sight, for they were then confronted with an imminent and formidable peril, to avert which, if possible, required instant exertion and the most engrossing attention. To heave the wheel aport, to ring the signal bells, to slow and back was done at once, and must have commanded the attention of both pilot and wheelsman during the brief instant which elapsed between their discovery of the schooner and the concussion of the vessels. I do not attribute very much weight to the testimony of the look-out of the *Norwich* on this point. Immediately after the collision he went aft and hailed the schooner, as ordered by the pilot. He says that she was lying a little apart of the steamer, and heading towards her. He says that if she had had a light on her starboard side, he should have seen it, and that she had none. There is some confusion in his answers, arising from his confounding the starboard and port sides, but he puts the matter beyond doubt when he says that the schooner was about the length of the steamer from the latter, and heading to westward. An hour after this, when it was much more difficult to see a light, the officers of the *Elm City* saw the starboard green light of the *Van Vliet* about twelve hundred feet off. This look-out of the *Norwich* may honestly testify to his impressions, yet be wholly mistaken. It would be surprising indeed, if, from the moment of the discovery of the *Van Vliet*, till both she and the steamer had gone to the bottom, he was not in a state of consternation little favorable to the accurate observation of what passed before his eyes.

Upon the character of the *Van Vliet's* lights, her officers and crew testify positively that they were burning brightly. They are measurably corroborated by the captain and mate of the *Chieftain*, as well as by the officers of the *Elm City*, though the latter did not discover her green light more than twelve hundred feet off. There has been no evidence tending to show that the schooner's lights were trimmed after the collision, and therefore their condition, at the time the *Elm City* passed her, is evidence of their condition before the collision took place.

But the question naturally arises,—why did not the officers of the *Elm City* discover the *Van Vliet's* green light sooner, and the officers of the *Norwich* fail to discover it at all? The answer to this question must, I think, be found in that part of the evidence which shows the state of the atmosphere, so far as the officers of the *Elm City* are concerned, and so far as it relates to the officers of the *Norwich*, in both the state of the atmosphere and the degree of attention which they were giving to their duties.

Before examining the proofs on the condition of the atmosphere at and about the time of the collision, it is pertinent to cite the allegations of the answer on this point. In the fourth article, the answer alleges that "the night was dark, and before the collision, had become hazy, with a low mist, and occasional bunches of low fog." It is true that the libel alleges that the "weather was clear," but in view of the evidence, this statement was unwarranted, and has led me to somewhat distrust the testimony of those on board the schooner, and to carefully recur to that of the other witnesses not connected with that vessel, on all the disputed points.

Captain Bowns, the pilot of the *Elm City*, says, that at 5 minutes past 2 o'clock it was fair for easterly weather, but became misty and hazy before morning. He says that it was right hazy when he passed the schooner, about an hour after the collision, and very soon set in thick and foggy. He also says that the day was breaking, and a bad time to see lights. Albert, the wheelsman of the *Elm City*, says that it was fair for easterly weather when they left New Haven, but towards morning it was more hazy. Hine, the mate of the *Chieftain*, says it was clear during the night, but became thick at daylight. Tracy, the pilot of the *Norwich*, is more explicit, and says, at 2 o'clock it was starlight would seem to be clearly made out. It was placed there, according to the testimony of those on board of her, corroborated by the Captain and Mate of the *Chieftain*, early in the evening.

The only remaining question to be determined is, whether it was such a light as those on the *Norwich* might and ought to have seen. The look-out, pilot, and wheelsman of the *Norwich* all say that they saw no light whatever on the *Van Vliet*, even after they discovered the schooner, herself. It is, perhaps, not remarkable that the pilot and wheelsman did not see it after the schooner came in sight, for they were then confronted with an imminent and formidable peril, to avert which, if possible, required instant exertion and the most engrossing attention. To heave the wheel aport, to ring the signal bells, to slow and back was done at once, and must have commanded the attention of both pilot and wheelsman during the brief instant which elapsed between their discovery of the schooner and the concussion of the vessels. I do not attribute very much weight to the testimony of the look-out of the *Norwich* on this point. Immediately after the collision he went aft and hailed the schooner, as ordered by the pilot. He says that she was lying a little apart of the steamer, and heading towards her. He says that if she had had a light on her starboard side, he should have seen it, and that she had none. There is some confusion in his answers, arising from his confounding the starboard and port sides, but he puts the matter beyond doubt when he says that the schooner was about the length of the steamer from the latter, and heading to westward. An hour after this, when it was much more difficult to see a light, the officers of the *Elm City* saw the starboard green light of the *Van Vliet* about twelve hundred feet off. This look-out of the *Norwich* may honestly testify to his impressions, yet be wholly mistaken. It would be surprising indeed, if, from the moment of the discovery of the *Van Vliet*, till both she and the steamer had gone to the bottom, he was not in a state of consternation little favorable to the accurate observation of what passed before his eyes.

Upon the character of the *Van Vliet's* lights, her officers and crew testify positively that they were burning brightly. They are measurably corroborated by the captain and mate of the *Chieftain*, as well as by the officers of the *Elm City*, though the latter did not discover her green light more than twelve hundred feet off. There has been no evidence tending to show that the schooner's lights were trimmed after the collision, and therefore their condition, at the time the *Elm City* passed her, is evidence of their condition before the collision took place.

But the question naturally arises,—why did not the officers of the *Elm City* discover the *Van Vliet's* green light sooner, and the officers of the *Norwich* fail to discover it at all? The answer to this question must, I think, be found in that part of the evidence which shows the state of the atmosphere, so far as the officers of the *Elm City* are concerned, and so far as it relates to the officers of the *Norwich*, in both the state of the atmosphere and the degree of attention which they were giving to their duties.

Before examining the proofs on the condition of the atmosphere at and about the time of the collision, it is pertinent to cite the allegations of the answer on this point. In the fourth article, the answer alleges that "the night was dark, and before the collision, had become hazy, with a low mist, and occasional bunches of low fog." It is true that the libel alleges that the "weather was clear," but in view of the evidence, this statement was unwarranted, and has led me to somewhat distrust the testimony of those on board the schooner, and to carefully recur to that of the other witnesses not connected with that vessel, on all the disputed points.

Captain Bowns, the pilot of the *Elm City*, says, that at 5 minutes past 2 o'clock it was fair for easterly weather, but became misty and hazy before morning. He says that it was right hazy when he passed the schooner, about an hour after the collision, and very soon set in thick and foggy. He also says that the day was breaking, and a bad time to see lights. Albert, the wheelsman of the *Elm City*, says that it was fair for easterly weather when they left New Haven, but towards morning it was more hazy. Hine, the mate of the *Chieftain*, says it was clear during the night, but became thick at daylight. Tracy, the pilot of the *Norwich*, is more explicit, and says, at 2 o'clock it was starlight overhead, but the weather gradually thickened up towards morning, and at the time of the collision it was bad seeing, hazy weather,—a sort of misty, gray atmosphere. Carpenter, the wheelsman, stated that there was what is called a low mist, at the time (of collision) what in seamen's language is termed foggy, lumpy. He further states that low clouds would sometimes seem to shut down pretty close to the water, and then it would light up again, and that very soon after the collision, it became foggy. On the cross-examination, this witness was very explicit, and testified as follows: "A few minutes before the collision, I know I thought of the matter—that it was lumpy.

"2. You say that it was dark; that once in a while very heavy clouds would drop down, making it very dark, and then it would light up again.

A. Yes, sir.

Q. Where did you see them?

A. Right ahead.

Q. Close to you?

A. Yes, sir; they seemed to be.

Q. How long remain?

A. They would frequently change their position and look.

Q. Were they dense, thick?

A. They seemed to be pretty dense.

Nye, the pilot of the Electra, says that about the time of the collision, the weather was cloudy and smoky. Gifford, her look-out, says that the weather was dark, cloudy and smoky. Crowley, the mate, says he came on deck just about the time of the collision, in consequence of the speed of his boat being slacked, and that it was a hazy, soft morning—soft weather, hazy, but not dark. Now, it is quite true that many of the witnesses who testify to the peculiar condition of the atmosphere at about the time of the collision, also state that lights could be seen a long distance; but their general statements on this point cannot obliterate the fact that the air was in a peculiar state, well calculated to dim if not obscure lights, and especially colored lights, at any considerable distance. The atmosphere was changing from time to time, as is frequently the case in a soft, damp, spring morning, and lights could undoubtedly be seen better and farther at some moments than at others. This unfavorable condition increased after the collision, and yet, an hour after, in the uncertain, misty, gray light of day-break, the Elm City discovered the green light of the Van Vliet about twelve hundred feet distant, and cleared her with ease, though running at the rate of fifteen miles an hour. On the whole evidence, therefore, I conclude that whatever dimness there was in the appearance of the Van Vliet's lights, when seen from other vessels, or difficulty of seeing them at any considerable distance at and after the collision, was owing to the thickness of the atmosphere, and not to any defect in the lights themselves, and it cannot fail to be noticed that the strength of this evidence touching the weather is largely drawn from the testimony of the witnesses for the respondents.

There is another feature of the evidence which may be noticed here. Nye, the pilot of the Electra, says that he was some distance astern of the Norwich, and nearly in her wake, at the time of the collision—that he made out the schooner, with his glass, about a mile from him, when she was five or six hundred feet from the Norwich—that she appeared directly opposite the Norwich, about off her beam—and that he could tell which way she was heading by the shape of her sails. Nickerson, the wheelsman of the Electra, attracted by the pilot's using his glass, looked and saw the schooner also, as I understand, with his naked eye. They neither of them saw any light on her. These witnesses undoubtedly discovered the Van Vliet about the same time that the officers of the Norwich first saw her, and I think it is clear that the lights of the latter were then reflected upon the schooner's sails. Both that fact and the state of the atmosphere would render it more difficult for those on the Electra, then a mile off, to discover the green light of the schooner. If it was not the reflection of the Norwich's lights on the schooner's sails that enabled the pilot and wheelsman of the Electra to discover her a mile off, and they discovered her before she was thus illuminated, then the deduction is irresistible that the officers of the Norwich were grossly and recklessly inattentive to their duty, or they would have seen her much sooner than they did, whether she had a light or not.

The state of the atmosphere, which may, and probably did, dim the light of the Van Vliet, was not, in the judgment of the Court, so unfavorable as to have rendered it at all difficult for the officers of the Norwich to have discovered her in ample time to have cleared her. The wheelsman had his duty to perform, and no responsibility as a lookout rested upon him. The pilot says he was looking out. He does not appear to have been using his glass, and he may have been less vigilant, as he had a lookout forward, near the stem, though on such a night, with a gray, misty and shifting atmosphere such as he describes, and running at that rate of speed, every inch of space within a large arc of the circle in advance of this steamer, should have been scanned with unremitting care, and with the frequent use of the glass. If the atmosphere became so dense, at intervals, from mist or smoke, or the shutting down of clouds toward the water, as to eclipse every object, as seems to be intimated by some of the witnesses, then the speed of the boat should have been reduced to a low rate at once, and kept so till it lifted again.

As to the failure of the look-out to discover the schooner, one of two things I think is certain. He was either inattentive to his duty, or the weather was so thick that he could not see an ordinary colored light any distance ahead. In the latter case, the speed of the boat should at once have been checked. From these views, it follows that a decree must be entered for the libellants, with an order of reference to compute the damages. Let such a decree be entered, with an order to Alfred Blackman to compute the amount lost by both the owner of the vessel and cargo, and report the same to the Court, with the evidence thereon.

CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF CONNECTICUT. } **IN ADMIRALITY.**

WILLIAM A. WRIGHT, ET AL., *Libellants,*
vs.
THE NORWICH & NEW YORK TRANSPORTATION COMPANY, *Respondents & Apellants.*
} **ON APPEAL.**

OPINION.

WOODRUFF, *Circuit J.*

This suit is brought *in personam* against the respondents as owners of the Steamboat, the City of Norwich, to recover for a loss caused by a collision between that Steamboat and the Schooner General S. Van Vliet on Long Island Sound, shortly before 4 o'clock in the morning of the 18th of April, 1866. The injury to both vessels was such that the Schooner soon sunk with all her cargo; the Steamboat took fire and also sunk with her cargo. Since this action was commenced the Steamboat was raised.

Some of the libellants were owners of the Schooner, the others were owners of her cargo, and the charge that the collision was caused by the negligence of those in the management of the Steamboat.

The respondents on the other hand deny all fault on their part, and allege that the Schooner was in fault in not exhibiting at the time sufficient lights as required by the act of Congress. They further state in their answer that the Steamboat had on board a large and valuable freight belonging to various parties, much larger in value than the whole amount of the interest of the respondents in the said Steamboat and in her freight then pending, all of which freight was lost.

On the trial in the District Court an interlocutory decree was made charging responsibility for the loss upon the respondents, and ordering a recovery by the libellants with the usual reference to compute, upon which the amount of the loss by the owners of the Schooner and the owners of her cargo respectively was ascertained and reported.

Thereupon by agreement of the parties and as a part of the record of said cause prior to the final decree, a motion was filed and allowed or entertained by the Court, wherein the respondents reiterated their statement that the City of Norwich at the time of said collision had on board a large and valuable cargo of merchandise on freight belonging to various parties and much larger in amount than the whole amount of the value of the interest of the respondents in said Steamer and her freight then pending; and alleging that the damages sustained by all of said parties by said collision, including the libellants, was much greater in amount than the value of the interest of the respondents in said Steamer and her freight then pending.

And also that proceedings had been commenced in behalf of said parties, against the said Steamer, in the District Court of the United States for the Eastern District of New York for the recovery of said damages.

And the respondents thereupon prayed, that they might be permitted to show by proper evidence the whole amount of damages sustained by all of said parties and the value of said Steamer and her freight then pending, and that the decree of this Court be so framed as to give to the libellants such part or proportion of the amount of damages sustained by them as the said value of the said interest of the said respondents bears to the whole amount of damages sustained by all parties by said collision.

The District Court denied the motion and gave a final decree for the libellants that they recover from the respondents the whole amount of the damages sustained (as fixed by the Court) and their costs, without any regard to the value of the respondents' interest in the Steamer and her freight, or to the amount of loss sustained by other parties by the collision.

Two questions are therefore raised and discussed upon the appeal; the case having been heard in this Court upon the same proof and on the record as it existed in the District Court.

First.—Upon the proof was the collision caused by the negligence or fault of those in the management of the City of Norwich?

Second.—Should the respondents have been permitted to show the whole amount of loss caused by the collision, to all parties affected thereby, and the value of the interest of the respondents in the vessel found in fault and in her freight then pending, with a view to reduce the recovery of the libellants to an amount duly proportioned to such value?

Upon the question first mentioned, viz.: By whose fault was the collision caused? the testimony is very voluminous, and the discussion has been very able, and the claim of the parties respectively has been sustained by a most minute and careful analysis, comparison and criticism of the testimony, and with an ingenuity, skill and force which I have rarely seen equaled.

In the testimony of the various witnesses examined on behalf of the respective parties there is very much in support of either view of the question. But after a most painstaking study of the proof, aided by the oral argument and by the elaborate written and printed briefs of the counsel, I am constrained to say that the preponderance of the evidence is with the libellants upon this question.

In a case of great doubt if I were inclined to a conclusion upon a mere question of fact at variance with the Court below, I should hesitate in reversing, where the witnesses were examined in the presence of the Court.

Here, however, while it must be conceded that the proof on both sides presents a serious conflict, the final conclusion, from which I cannot escape, is in concurrence with that of the District Judge.

I have examined the testimony in the light of the searching criticism of each witness contained in the brief of the respondents' counsel on appeal, and yet I conclude that the Schooner was without fault.

Those in charge of the Steamer were not in the exercise of due diligence.

The discussion of the evidence has been so full on both sides, that I should do nothing serviceable to either party were I to reproduce the evidence tending to the result stated. The opinion of the learned District Judge presents a just and impartial review of the evidence, and in my opinion it gives the true solution of the question in dispute. The Schooner had her proper lights. It is not possible that the look-out on the City of Norwich was in the actual exercise of diligence, or he would have sooner discovered her. Indeed, when he did see her he did not report her. This neglect of duty he seeks to excuse by his belief that the pilot had himself then discovered her. It was his duty to report, and not to trust to his supposition or surmise, and this circumstance tends very strongly in my mind to the belief, founded on his own testimony, that he was not performing his duty in any respect. While on the other hand, as forcibly shown in the opinion, if the actual state of the weather just before the collision rendered it impossible to see the Schooner, the Steamer was in like fault in not proceeding, at a speed so moderate that when she did discover the Schooner she could better control her own motions.

Upon the second question I find no little embarrassment.

The claim of the respondents arises under the third section of the Act of Congress of March 3d, 1851, (9th Stat. at large, 635,) which reads as follows:—"The liability of the owner or owners of any ship or vessel, for "any embezzlement, loss or destruction by the master, "officers, mariners, passengers, or any other person or "persons, of any property, goods or merchandize shipped "or put on board of such ship or vessel, or for any loss, "damage or injury by collision, or for any act, matter or "thing, loss, damage or forfeiture, done, occasioned or "incurred without the privity or knowledge of such owner "or owners, shall in no case exceed the amount or value "of the interest of such owner or owners respectively, in "such ship or vessel and her freight then pending."

1st. The manner in which the question was raised below seems to me novel. Assuming for the moment that the statute applies to the case, and that the respondents have by virtue thereof a right to reduce the plaintiffs' recovery by proving that the whole loss by the collision exceeds the amount or value of their interest in the ship or vessel found in fault and in her freight then pending, and that the proof in reduction of damages may be given in the action brought to charge the owners, it would seem to follow that such proof should be given on the trial, or that if the Court see fit to try the question of liability and settle the rule or measure thereof in the first instance, then that such proof should be offered before the commissioner to whom it is referred to take proofs of the amount of the damages for which a recovery is to be awarded.

The motion made in the District Court, however, seems to have been in the nature of an application to open the proofs in the cause after they were closed, and let in testimony which, if of any avail, must operate to modify the interlocutory decree already pronounced which awarded to the libellants a recovery of all the damages by them sustained, and if the motion contemplated a further hearing before the commissioner, a modification of such interlocutory decree would be necessary.

In this view the motion was plainly addressed to the discretion of the Court, and its denial, as an exercise of discretion, could not be claimed to be erroneous.

And again, if proofs on the subject were offered in the District Court and rejected, (on whatever ground and in whatever stage of the trial or proceedings,) inasmuch as they would go not merely to a question of amount or matter of computation, but to a rule governing the recovery when and after all the material amounts were computed and ascertained, I perceive no reason why such proofs might not be offered in the Circuit Court on the appeal which has, if the appellant sees fit, many of the characteristics of a new trial. Doubtless the issue must be made below, and in some form the question of law should appear to have been before the Court below. But if in the Circuit Court it appears that the testimony ought not to have been rejected, the respondents would and must be permitted to give the proof in this Court.

The construction of the Act of Congress is, however, in a degree unsettled. The practice under it, in cases to which it applies, appears to have not been prescribed, nor is it established by any usage of the Court. It can hardly be deemed a fault if counsel under such circumstances failed to select the most orderly mode of raising the questions.

Besides I think the record shows that the course pursued had the sanction of the District Court, and although the granting of the motion would have required a modification of the interlocutory decree, and probably a further reference to take proofs of amounts, the Court no doubt had power first to settle the question of liability, next the amount of the libellants' loss, and then if any other fact necessary to fix the amount of recovery was wanting to make a further reference, the precise order of proceeding in this respect which that Court saw fit to pursue would not be interfered with on an appeal which would raise the whole question and all the questions which were raised and passed upon in the District Court.

Nor was the question disposed of there as a question of practice or matter of discretion. The agreement of counsel, the allowance of the motion there and the opinion of the Court, show that it was intended as a disposition of the subject on other grounds, and it was so disposed of.

And finally, on this point I have no doubt of the power of this Court on appeal, in view of the fact that the question was distinctly raised below, to entertain it here, and to deal with it as freely, according to what may be found due to the rights of the respondents, as it could if the testimony had been offered on the trial in the first instance, and been there rejected.

True, on the appeal the proofs were not formally offered, but the question of their admissibility, and their influence upon the recovery, were argued at great length, and the right of the respondents to give such proof and take the benefit thereof was most earnestly insisted upon. If, therefore, such proofs were proper, and would avail to reduce the liability of the respondents in this suit, the Court can give relief and ought to do so. I must therefore treat the question as open, and as fully as it was considered in the District Court.

2. It is very strongly urged that the Act of Congress has no application to the claim of the owners of another vessel, or of the cargo of another vessel, injured by a collision with a ship which is in fault in producing it; that the claim of the libellants in this case is not within the statute, and therefore the proofs proposed to be given, and the facts they would establish, are irrelevant, and cannot affect the amount of their recovery.

The special circumstances which led to an effort by ship owners to procure an Act of Congress in modification of their common law liability, which resulted in the passage of the Act in question are of some significance.

They were to some extent within my own personal knowledge. They were very notorious, and are referred to in the Debates in the Senate of the United States on the passage of the bill.

Shortly before the subject was brought to the attention of Congress, the packet ship Henry Clay, a large, costly and nearly new ship, lying at the wharf in the port of New York, having nearly completed her lading and being bound for Europe, took fire from some cause and was burned, with a cargo already laden amounting in value according to my recollection, to half a million of dollars. Her owners, being losers to a very large amount by the burning of the ship, were proceeded against by owners of cargo to compel payment to them of its value. In one of the actions I was myself of counsel, and it was strenuously insisted that even without any such statutes as exist in England, the owners could not be charged upon the usual rule of liability of common carriers at common law. No proof of actual fault or negligence, except so far as the occurrence of the fire in the ship might warrant such inference, was given or attempted. The owners were held liable. Pending that action I was aware, through the distinguished counsel for the then defendants, that an effort was made to procure some legislation from Congress to soften the rigor of the rule declared in that case.

Some years before the burning of the Henry Clay, and in the night of the 13th of January, 1840, the steamboat Lexington was burned upon Long Island Sound, and the disaster was accompanied by a painful loss of life and the destruction of a large amount of property. Litigation ensued, and the liability of the owners was declared in the *New Jersey Steam Navigating Company* vs. *The Merchants Bank*, in the Supreme Court of the United States, (see 6 *Howard*, 344,) decided in 1848.

Both of these disasters, and the alleged hardships of the law against ship owners as common carriers, were commented upon in the debates which were had upon

Besides I think the record shows that the course pursued had the sanction of the District Court, and although the granting of the motion would have required a modification of the interlocutory decree, and probably a further reference to take proofs of amounts, the Court no doubt had power first to settle the question of liability, next the amount of the libellants' loss, and then if any other fact necessary to fix the amount of recovery was wanting to make a further reference, the precise order of proceeding in this respect which that Court saw fit to pursue would not be interfered with on an appeal which would raise the whole question and all the questions which were raised and passed upon in the District Court.

Nor was the question disposed of there as a question of practice or matter of discretion. The agreement of counsel, the allowance of the motion there and the opinion of the Court, show that it was intended as a disposition of the subject on other grounds, and it was so disposed of.

And finally, on this point I have no doubt of the power of this Court on appeal, in view of the fact that the question was distinctly raised below, to entertain it here, and to deal with it as freely, according to what may be found due to the rights of the respondents, as it could if the testimony had been offered on the trial in the first instance, and been there rejected.

True, on the appeal the proofs were not formally offered, but the question of their admissibility, and their influence upon the recovery, were argued at great length, and the right of the respondents to give such proof and take the benefit thereof was most earnestly insisted upon. If, therefore, such proofs were proper, and would avail to reduce the liability of the respondents in this suit, the Court can give relief and ought to do so. I must therefore treat the question as open, and as fully as it was considered in the District Court.

2. It is very strongly urged that the Act of Congress has no application to the claim of the owners of another vessel, or of the cargo of another vessel, injured by a collision with a ship which is in fault in producing it; that the claim of the libellants in this case is not within the statute, and therefore the proofs proposed to be given, and the facts they would establish, are irrelevant, and cannot affect the amount of their recovery.

The special circumstances which led to an effort by ship owners to procure an Act of Congress in modification of their common law liability, which resulted in the passage of the Act in question are of some significance.

They were to some extent within my own personal knowledge. They were very notorious, and are referred to in the Debates in the Senate of the United States on the passage of the bill.

Shortly before the subject was brought to the attention of Congress, the packet ship Henry Clay, a large, costly and nearly new ship, lying at the wharf in the port of New York, having nearly completed her lading and being bound for Europe, took fire from some cause and was burned, with a cargo already laden amounting in value according to my recollection, to half a million of dollars. Her owners, being losers to a very large amount by the burning of the ship, were proceeded against by owners of cargo to compel payment to them of its value. In one of the actions I was myself of counsel, and it was strenuously insisted that even without any such statutes as exist in England, the owners could not be charged upon the usual rule of liability of common carriers at common law. No proof of actual fault or negligence, except so far as the occurrence of the fire in the ship might warrant such inference, was given or attempted. The owners were held liable. Pending that action I was aware, through the distinguished counsel for the then defendants, that an effort was made to procure some legislation from Congress to soften the rigor of the rule declared in that case.

Some years before the burning of the Henry Clay, and in the night of the 13th of January, 1840, the steamboat Lexington was burned upon Long Island Sound, and the disaster was accompanied by a painful loss of life and the destruction of a large amount of property. Litigation ensued, and the liability of the owners was declared in the *New Jersey Steam Navigating Company* vs. *The Merchants Bank*, in the Supreme Court of the United States, (see 6 *Howard*, 344,) decided in 1848.

Both of these disasters, and the alleged hardships of the law against ship owners as common carriers, were commented upon in the debates which were had upon

Besides I think the record shows that the course pursued had the sanction of the District Court, and although the granting of the motion would have required a modification of the interlocutory decree, and probably a further reference to take proofs of amounts, the Court no doubt had power first to settle the question of liability, next the amount of the libellants' loss, and then if any other fact necessary to fix the amount of recovery was wanting to make a further reference, the precise order of proceeding in this respect which that Court saw fit to pursue would not be interfered with on an appeal which would raise the whole question and all the questions which were raised and passed upon in the District Court.

Nor was the question disposed of there as a question of practice or matter of discretion. The agreement of counsel, the allowance of the motion there and the opinion of the Court, show that it was intended as a disposition of the subject on other grounds, and it was so disposed of.

And finally, on this point I have no doubt of the power of this Court on appeal, in view of the fact that the question was distinctly raised below, to entertain it here, and to deal with it as freely, according to what may be found due to the rights of the respondents, as it could if the testimony had been offered on the trial in the first instance, and been there rejected.

True, on the appeal the proofs were not formally offered, but the question of their admissibility, and their influence upon the recovery, were argued at great length, and the right of the respondents to give such proof and take the benefit thereof was most earnestly insisted upon. If, therefore, such proofs were proper, and would avail to reduce the liability of the respondents in this suit, the Court can give relief and ought to do so. I must therefore treat the question as open, and as fully as it was considered in the District Court.

2. It is very strongly urged that the Act of Congress has no application to the claim of the owners of another vessel, or of the cargo of another vessel, injured by a collision with a ship which is in fault in producing it; that the claim of the libellants in this case is not within the statute, and therefore the proofs proposed to be given, and the facts they would establish, are irrelevant, and cannot affect the amount of their recovery.

The special circumstances which led to an effort by ship owners to procure an Act of Congress in modification of their common law liability, which resulted in the passage of the Act in question are of some significance.

They were to some extent within my own personal knowledge. They were very notorious, and are referred to in the Debates in the Senate of the United States on the passage of the bill.

Shortly before the subject was brought to the attention of Congress, the packet ship Henry Clay, a large, costly and nearly new ship, lying at the wharf in the port of New York, having nearly completed her lading and being bound for Europe, took fire from some cause and was burned, with a cargo already laden amounting in value according to my recollection, to half a million of dollars. Her owners, being losers to a very large amount by the burning of the ship, were proceeded against by owners of cargo to compel payment to them of its value. In one of the actions I was myself of counsel, and it was strenuously insisted that even without any such statutes as exist in England, the owners could not be charged upon the usual rule of liability of common carriers at common law. No proof of actual fault or negligence, except so far as the occurrence of the fire in the ship might warrant such inference, was given or attempted. The owners were held liable. Pending that action I was aware, through the distinguished counsel for the then defendants, that an effort was made to procure some legislation from Congress to soften the rigor of the rule declared in that case.

Some years before the burning of the Henry Clay, and in the night of the 13th of January, 1840, the steamboat Lexington was burned upon Long Island Sound, and the disaster was accompanied by a painful loss of life and the destruction of a large amount of property. Litigation ensued, and the liability of the owners was declared in the *New Jersey Steam Navigating Company* vs. *The Merchants Bank*, in the Supreme Court of the United States, (see 6 *Howard*, 344,) decided in 1848.

Both of these disasters, and the alleged hardships of the law against ship owners as common carriers, were commented upon in the debates which were had upon

the act now in question. And an examination of those debates show, that it was the stringent rule of the common law which made common carriers of property liable for all losses, (except such as were caused by the act of God or the public enemies,) however free from actual fault or negligence, that was the subject of comment; and the apparent purpose, so far as it may be gathered from those debates, was to relax that rule.

It is therefore a further significant circumstance, that in those debates nothing is said of injuries to other vessels, or the liability of ship owners as principals for the tortious negligence of their ship masters, officers or crews, as their servants, by which the property of persons in no wise entrusted to them received injury. Nor was the rule of the common law which makes the master liable for the negligence of his servant in his business, the subject of review, criticism or comment.

These circumstances, by no means controlling, are nevertheless appropriately referred to in reviewing the act, and may throw light upon its meaning, if otherwise such meaning and the intent of the Legislature be doubtful.

The act itself begins with a declaration that ship owners shall not be liable for loss or damage by fire to any goods or merchandise whatever, shipped, taken in, or put on board, unless such fire is caused by the design or neglect of the owner.

This has no other operation than to effect their relations as common carriers.

The proviso to that section, that "nothing in *this act* shall prevent the parties from making such contract as they please, extending or limiting the liability of ship owners," is some indication that Congress believed that they were dealing with a question of liability which might be the subject of a contract, not with a liability for tortious negligence to parties who stood, and who could stand, in no relation of contract whatever with such owners. The proviso is annexed apparently to the first section, but it is noticeable that the language is not, "nothing in this section" but "nothing in *this act*," indicating that the proviso was intended to apply to the whole act. The proviso was introduced as an amendment after the act was reported to the Senate, and the inference that a relation which might appropriately be the subject of a prior contract was the subject of the entire act, is by no means unwarranted.

The second section appertains solely to the duty of shippers, to the master and owners of the ship in the relation of the latter to the former as carriers, and the liability affected thereby is expressly described as their liability "as carriers thereof."

The third section is in the terms already above recited. It must be conceded that it contains terms which, viewed apart from the residue of the act, are broad enough to include injury to other vessels by collision. This fact is not conclusive. In the construction of statutes as well as private instruments and contracts, general words are restricted in their meaning by the subject matter of the statute or instrument, the context, the apparent intent; and in an enumeration of particulars followed by general terms a restriction of the latter to cases or things *ejusdem generis* is according to settled rule.

See *Moore* vs. *Am. Trans. Co.*, 24 *How.* 36. *Regina* vs. *Reed*, 28 *Eng. L. & E.*, 133. *Regina* vs. *Nevill* 8 *Q. B.*, 452. *Sandiman* vs. *Breach*, 7. *Barn. and Cres.*, 96. *Ryegate* vs. *Wardsboro*, 30 *Vt.* 746. *Simonds* vs. *Powers*, 28 *Vt.* 354.

And in construing any particular clause or words of a statute it is especially necessary to examine and consider the whole statute, and gather if possible from the whole the intention of the Legislature.

Now it has already been seen that the first and second sections have sole reference to the relations of ship owners as common carriers. The fourth section as clearly affects them in that relation only. Thus, it provides that if any such loss, embezzlement or destruction shall be suffered by several freighters or owners of goods, wares or merchandize, or any property whatsoever on the same voyage, and the whole value of the ship or vessel and her freight for the voyage shall not be sufficient to make compensation to each of them, they shall receive compensation * * * in proportion to their respective losses. And for that purpose such freighters and owners of the property and the ship owners, or any of them, may take the appropriate proceedings in any court for apportioning the sum to which the ship owners are liable

* * And the ship owners are authorized to transfer their interest in the vessel or freight for the benefit of such claimants to a trustee to be appointed, &c., * * from and after which transfer all claims and proceedings against the owner or owners shall cease.

Here the terms, goods, wares or merchandize or any property whatever, are equivalent to the words in the third section, "any property, goods or merchandize," and of the words, "goods, wares merchandize or other property" in the sixth section; in each of which they relate solely to property of some kind put on board the vessel.* And the phrase is added "on the same voyage" to confine the participation in the apportionment to the freighters for a single voyage, and not to permit the ship owners to bring into the compensation losses sustained on prior or other voyages.

The limitation of the application of the fourth section is very important in its bearing upon the question is another aspect, but here I state it simply in order to show that such is its proper construction; it may be possible to select a portion of the words to give color to a more comprehensive meaning, but freighters or owners of goods, wares or merchandize or any property whatever, on the same voyage, could not clearly include the owner of another ship pursuing a voyage in another direction, sunk by collision. And a "loss suffered by" several freighters and owners of property on the same voyage, is wholly inapt to include the loss sustained by the owner of another ship on another voyage.

This limitation of the application to property on board the ship, or for which the ship owners would be liable as common carriers by the common law, has been affirmed by Mr. Justice Grier in *Barnes* vs. *Steamship Co.*, (*Philadelphia Legal Intelligencer*, *June* 19, 1868,) and by the decision of Judge Merrick, (14 *Grey* 288,) in Massachusetts.

The fifth section places charterers in the same situation as ship owners, when the former man, victual and navigate the ships.

The sixth excludes the idea that the act was intended to exonorate the master, officers and mariners from liability for their own fault or negligence.

The seventh relates solely to persons shipping dangerous or inflammable articles on board a vessel taking a cargo for various persons on freight without giving a notice describing their nature and character, and imposes a penalty. And the last section exempts certain craft from the operation of the act.

A perusal of the entire act, a consideration of its apparent design, its general purport being applicable to ship owners as common carriers only, compels me to conclude that it was their relation as such carriers which Congress alone had in view.

If it is asked, what then do the words "for any loss, damage, or injury by collision," "or for any act, matter, or thing, loss, damage or forfeiture, done, occasioned or suffered," mean? I answer, that having the responsibility of carrier at the common law in view, a responsibility which subjected the ship owner for every loss not caused by the act of God, or the public enemies, some such words were necessary to cover all the grounds of their liability as carriers.

It was not enough to specify "embezzlement, loss, or destruction by the master, officers, mariners, passengers or other persons." Collision and many other acts and things might occasion loss or injury to property entrusted to them as carriers, for which but for these words they would be responsible to the full amount. The collision in the case now under consideration furnishes an illustration, for the City of Norwich having on board a valuable cargo, that cargo was lost by the collision, and that loss would be within the terms of the section.

Not only so, collision and many other acts, matters, things, losses, damage and injury might happen, be "done, occasioned or incurred" without any fault or negligence either of the ship owners or their masters or mariners, and be due solely to the fault or negligence of other persons, or be an accident in such sense that faulty negligence could be imputed to no one, and yet the ship owners would be liable. These classes of cases are therefore provided for and are clearly within the design and object of the statute.

There is therefore a large field for the operation of all the words of the third section without extending their meaning to an injury to another vessel or goods on board thereof.

* * And the ship owners are authorized to transfer their interest in the vessel or freight for the benefit of such claimants to a trustee to be appointed, &c., * * from and after which transfer all claims and proceedings against the owner or owners shall cease.

Here the terms, goods, wares or merchandize or any property whatever, are equivalent to the words in the third section, "any property, goods or merchandize," and of the words, "goods, wares merchandize or other property" in the sixth section; in each of which they relate solely to property of some kind put on board the vessel.* And the phrase is added "on the same voyage" to confine the participation in the apportionment to the freighters for a single voyage, and not to permit the ship owners to bring into the compensation losses sustained on prior or other voyages.

The limitation of the application of the fourth section is very important in its bearing upon the question is another aspect, but here I state it simply in order to show that such is its proper construction; it may be possible to select a portion of the words to give color to a more comprehensive meaning, but freighters or owners of goods, wares or merchandize or any property whatever, on the same voyage, could not clearly include the owner of another ship pursuing a voyage in another direction, sunk by collision. And a "loss suffered by" several freighters and owners of property on the same voyage, is wholly inapt to include the loss sustained by the owner of another ship on another voyage.

This limitation of the application to property on board the ship, or for which the ship owners would be liable as common carriers by the common law, has been affirmed by Mr. Justice Grier in *Barnes* vs. *Steamship Co.*, (*Philadelphia Legal Intelligencer*, *June* 19, 1868,) and by the decision of Judge Merrick, (14 *Grey* 288,) in Massachusetts.

The fifth section places charterers in the same situation as ship owners, when the former man, victual and navigate the ships.

The sixth excludes the idea that the act was intended to exonorate the master, officers and mariners from liability for their own fault or negligence.

The seventh relates solely to persons shipping dangerous or inflammable articles on board a vessel taking a cargo for various persons on freight without giving a notice describing their nature and character, and imposes a penalty. And the last section exempts certain craft from the operation of the act.

A perusal of the entire act, a consideration of its apparent design, its general purport being applicable to ship owners as common carriers only, compels me to conclude that it was their relation as such carriers which Congress alone had in view.

If it is asked, what then do the words "for any loss, damage, or injury by collision," "or for any act, matter, or thing, loss, damage or forfeiture, done, occasioned or suffered," mean? I answer, that having the responsibility of carrier at the common law in view, a responsibility which subjected the ship owner for every loss not caused by the act of God, or the public enemies, some such words were necessary to cover all the grounds of their liability as carriers.

It was not enough to specify "embezzlement, loss, or destruction by the master, officers, mariners, passengers or other persons." Collision and many other acts and things might occasion loss or injury to property entrusted to them as carriers, for which but for these words they would be responsible to the full amount. The collision in the case now under consideration furnishes an illustration, for the City of Norwich having on board a valuable cargo, that cargo was lost by the collision, and that loss would be within the terms of the section.

Not only so, collision and many other acts, matters, things, losses, damage and injury might happen, be "done, occasioned or incurred" without any fault or negligence either of the ship owners or their masters or mariners, and be due solely to the fault or negligence of other persons, or be an accident in such sense that faulty negligence could be imputed to no one, and yet the ship owners would be liable. These classes of cases are therefore provided for and are clearly within the design and object of the statute.

There is therefore a large field for the operation of all the words of the third section without extending their meaning to an injury to another vessel or goods on board thereof.

There is also great force in the argument of the counsel for the libellants founded upon the provisions of the English statute in relation to ship owners.

The Statute of 53 George III. was before the Congress of the United States when this act was passed. It not only so appears by the debates, but it would reasonably be so inferred. The discussion proceeded largely upon the policy of England and of this country, in its relations to other maritime nations, of encouraging the building and employment of ships, by relaxing the severe rule of liability of carriers at the common law. The English statute in terms extended beyond that and applied the limitation of responsibility in very terms to any loss or damage, "which may happen to any other ship or vessel or to any goods, wares, merchandize or other thing being in or on board of any other ship or vessel,"—and Congress rejected this sentence altogether, and employed general expressions almost identical with the previous English statute which related solely to the liability of ship owners as carriers.

It is inconceivable that if this liability for injury to another ship or vessel or goods, &c., on board another vessel was intended to be embraced in the Act, those, clear and explicit terms employed in the English Act should have been discarded. The rejection of those words cannot be otherwise accounted for, except it be upon a supposition dishonorable to the framers of the law, and which the Court cannot for a moment indulge, viz. :—that there was a covert design to employ words which might have a similar operation, and their meaning be so concealed that the bill might be passed by Congress in ignorance of the design.

The words, loss, damage or injury by collision, and the general words that follow have, therefore, by just construction, the same meaning and effect as they would if the word "thereto" had been used in connection therewith, viz. :—"for any loss, damage or injury thereto by collision," &c.

Again, if I am right, or if Mr. Justice Grier and the Supreme Court of Massachusetts are right, in holding that the fourth section of the act applies only to freighters and owners of goods and property on board the ship, and therefore applies only to the relation of the ship owners to those whose goods and property they assume to carry, then it seems to me inevitable that the whole Act, the third section included, applies only to the same relations, and for this reason,—

Congress was in the act of limiting the responsibility of ship owners, and by the third section alone had declared that limitation for all the cases to which it should apply. They fixed its extent, viz.: the amount or value of the interest of such owner or owners respectively in such ship or vessel and her freight then pending.

To provide for carrying this limitation into effect and to make it operate equitably among all parties suffering losses within the act, they declare, first, that each shall receive in proportion to his loss, and that proceedings for apportioning the amount may be taken by either party. It is not possible that it was intended to include in the limitation of the amount to be recovered, owners of another vessel injured by a collision, and yet exclude them from the benefit of the apportionment provided in this fourth section.

Again, this fourth section provides that the ship owners may transfer their interest in the ship and freight to a trustee, and after such transfer all claims and proceedings against such owners shall cease. How then shall the limitations be made to operate in their favor as against owners of another ship (if they are included in the third section,) when such owners are not to become beneficiaries under the trust created pursuant to the fourth.

A construction which makes the third section apply to an injury done to another vessel, or the goods on board of another vessel, by a collision, cannot stand with the fourth section so construed, or any view of justice or equity, nor in any consistency with the principal of the act itself, viz.: the limitation of the ship owner's liability to the amount of his interest.

I have not been unmindful that dicta are found in some cases cited by counsel which assume that the Statute in question does include a case of injury to another vessel by collision therewith. But in none was that the point in judgment, or if incidentally involved was the question raised or discussed. Those dicta are chiefly in the words of the statute itself, and in truth furnish no aid to its true construction, nor do they decide the question I have considered.

Without protracting the discussion, already too prolix, I am constrained to say the Act of Congress relied upon by the counsel for the respondents has no application to the injury received by the libellants in this case, and therefore that the proofs proposed to be given were wholly irrelevant, and could have no influence upon the decree which it was the duty of the District Court to make.

3. The conclusion which I have reached leads to an affirmance of the decree, though upon different grounds from those which led the District Court to reject the evidence offered. It is therefore not necessary that I should express an opinion upon the question whether this Court as a Court of Admiralty has powers or jurisdiction adequate to give full effect to the Act of Congress referred to.

If Congress had declared that the respondents should not be liable for losses sustained by the collision except to the amount of their interest in the vessel in fault and her freight then pending, no court, whether of Admiralty or Law or Equity, could properly make a decree which in terms subjected them to a larger liability and thereby practically nullify the statute.

Under the similar English Statute even the Courts of Law have regarded this limitation as prescribing the rule or measure of damages in actions on the case when the liability to a single plaintiff was before the Court, though no such case is cited where losses were sustained by other parties which were sought to be brought into the computation.

Cannan vs. *Meaburn*, 1 *Bing*, 465. *Wilson* vs. *Dickson*, 2 *Barn. & Ald.*, 2. *Brown* vs. *Wilkinson*, 15 *Mees. & Welsb.* 390.

And it cannot be doubted that in a case to which the statute applies, if several libels were filed in the Court of Admiralty by different claimants for losses sustained, or one libel was filed on behalf of several such claimants, that Court has ample power to give full effect to the statute as against such libellants, so far at least as to refuse a decree which should subject the respondents to a larger liability to all those libellants than the Act of Congress declares.

The Richmond, 3 *Hagg*, 431. *The Benares*, 1 *Eng.*, *L. & Eq.*, 637. *The Dundee*, 1 *Hagg*, 109; *Gale* vs. *Laurie*, 5 *B. & C.*, 156.

In England in *Dobre* vs. *Schroder*, (2 *Mylne and Craig*, 488 and 6 *Sim.* 291,) after two separate actions at law had been separately prosecuted to verdicts, the Court of Chancery entertained a bill for the apportionment of the value of the vessel, &c., between the two plaintiffs and the limitation of the owners' responsibility to that value.

A resort to a Court of Equity may be necessary under this Act of Congress to make such an apportionment if the party seeking it desires to bring into view losses sustained by all, and yet a libellant in Admiralty would have no ground of complaint if, having chosen to go into that Court, the respondent were permitted to prove any facts which, as matter of law, operated to reduce the amount of recovery. As between him and the respondent such proof might furnish a measure of the amount to which he was entitled, and an assessment made in conformity therewith might be conclusive between the parties although no third person would be affected thereby.

If in this view the statute could be held to warrant the application of the statute in each case and between any parties, it might not concern a particular libellant to have other parties before the Court, provided he is himself willing to take the hazard of such proofs as the respondent may give of the aggregate amount of the losses, and the same might be true of the respondent, if he prefers to try the question as to each claimant.

It must of course be conceded that whatever rights a party may have, and whether given by statute or otherwise, they are to be asserted in due and proper form and before the proper tribunal. But it cannot, I think, be true that a defendant must be made to bear a liability to which a valid statute declares he shall not be subject, upon any idea that there is no Court which can administer the statute. It were better to say if there is no Court which can give a judgment or decree in favor of the claimant without violating the statute, then no decree or judgment can be rendered.

And if it were clear by reason of the number of claimants who have sustained losses and their residence in various states, there is no tribunal which can obtain jurisdiction of all, it would be plausible, at least, to say that the Court is compelled to proceed with the parties of whom they have jurisdiction, and render justice as between them upon all the proofs either may offer bearing on the liability according to the limitation which the statute has declared.

The decree must be affirmed.

CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF CONNECTICUT. } IN ADMIRALTY.

WILLIAM A. WRIGHT *et al.* *Libellants,*
vs.
THE NORWICH & NEW YORK TRANSPORTATION COMPANY, *Respondents & Appellants.* } ON APPEAL.

OPINION OF WOODRUFF, J.

CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF CONNECTICUT. } IN ADMIRALTY.

WILLIAM A. WRIGHT, *et al., Libellants,*
vs.
THE NORWICH & NEW YORK TRANSPORTATION COMPANY, *Respondents & Appellants.* } ON APPEAL.

MESSRS. E. H. OWEN, J. S. BEACH AND J. HALSEY,
for Appellants.

MESSRS. R. H. HUNTLEY AND C. R. INGERSOLL,
for Appellees.

OPINION.

WOODRUFF, *Circuit J.*

This suit is brought *in personam* against the respondents as owners of the Steamboat, the City of Norwich, to recover for a loss caused by a collision between that Steamboat and the Schooner General S. Van Vliet on Long Island Sound, shortly before 4 o'clock in the morning of the 18th of April, 1866. The injury to both vessels was such that the Schooner soon sunk with all her cargo; the Steamboat took fire and also sunk with her cargo. Since this action was commenced the Steamboat was raised.

Some of the libellants were owners of the Schooner, the others were owners of her cargo, and they charge that the collision was caused by the negligence of those in the management of the Steamboat.

The respondents on the other hand deny all fault on their part, and allege that the Schooner was in fault in not exhibiting at the time sufficient lights as required by the act of Congress. They further state in their answer that the Steamboat had on board a large and valuable freight belonging to various parties, much larger in value than the whole amount of the interest of the respondents in the said Steamboat and in her freight then pending, all of which freight was lost.

On the trial in the District Court an interlocutory decree was made charging responsibility for the loss upon the respondents, and ordering a recovery by the libellants with the usual reference to compute, upon which the amount of the loss by the owners of the Schooner and the owners of her cargo respectively was ascertained and reported.

Thereupon by agreement of the parties and as a part of the record of said cause prior to the final decree, a motion was filed and allowed or entertained by the Court, wherein the respondents reiterated their statement that the City of Norwich at the time of said collision had on board a large and valuable cargo of merchandise on freight belonging to various parties and much larger in amount than the whole amount of the value of the interest of the respondents in said Steamer and her freight then pending; and alleging that the damages sustained by all of said parties by said collision, including the libellants, was much greater in amount than the value of the interest of the respondents in said Steamer and her freight then pending.

And also that proceedings had been commenced in behalf of said parties, against the said steamer, in the District Court of the United States for the Eastern District of New York for the recovery of said damages.

And the respondents thereupon prayed, that they might be permitted to show by proper evidence the whole amount of damages sustained by all of said parties and the value of said steamer and her freight then pending, and that the decree of this Court be so framed as to give to the libellants such part or proportion of the amount of damages sustained by them as the said value of the said interest of the said respondents bears to the whole amount of damages sustained by all parties by said collision.

The District Court denied the motion and gave a final decree for the libellants that they recover from the respondents the whole amount of the damages sustained (as fixed by the Court) and their costs, without any regard to the value of the respondents' interest in the Steamer and her freight, or to the amount of loss sustained by other parties by the collision.

Two questions are therefore raised and discussed upon the appeal; the case having been heard in this Court upon the same proof and on the record as it existed in the District Court.

First.—Upon the proof was the collision caused by the negligence or fault of those in the management of the City of Norwich?

Second.—Should the respondents have been permitted to show the whole amount of loss caused by the collision, to all parties affected thereby, and the value of the interest of the respondents in the vessel found in fault and in her freight then pending, with a view to reduce the recovery of the libellants to an amount duly proportioned to such value?

Upon the question first mentioned, viz.: By whose fault was the collision caused? the testimony is very voluminous, and the discussion has been very able, and the claim of the parties respectively has been sustained by a most minute and careful analysis, comparison and criticism of the testimony, and with an ingenuity, skill and force which I have rarely seen equalled.

In the testimony of the various witnesses examined on behalf of the respective parties there is very much in support of either view of the question. But after a most painstaking study of the proof, aided by the oral argument and by the elaborate written and printed briefs of the counsel, I am constrained to say that the preponderance of the evidence is with the libellants upon this question.

In a case of great doubt if I were inclined to a conclusion upon a mere question of fact at variance with the Court below, I should hesitate in reversing, where the witnesses were examined in the presence of the Court.

Here, however, while it must be conceded that the proof on both sides presents a serious conflict, the final conclusion, from which I cannot escape, is in concurrence with that of the District Judge.

I have examined the testimony in the light of the searching criticism of each witness contained in the brief of the respondents' counsel on appeal, and yet I conclude that the schooner was without fault.

Those in charge of the steamer were not in the exercise of due diligence.

The discussion of the evidence has been so full on both sides, that I should do nothing serviceable to either party were I to reproduce the evidence tending to the result stated. The opinion of the learned District Judge presents a just and impartial review of the evidence, and in my opinion it gives the true solution of the question in dispute. The schooner had her proper lights. It is not possible that the look-out on the City of Norwich was in the actual exercise of diligence, or he would have sooner discovered her. Indeed, when he did see her he did not report her. This neglect of duty he seeks to excuse by his belief that the pilot had himself then discovered her. It was his duty to report, and not to trust to his supposition or surmise, and this circumstance tends very strongly in my mind to the belief, founded on his own testimony, that he was not performing his duty in any respect. While on the other hand, as forcibly shown in the opinion, if the actual state of the weather just before the collision rendered it impossible to see the schooner, the steamer was in like fault in not proceeding, at a speed so moderate that when she did discover the schooner she could better control her own motions.

Upon the second question I find no little embarrassment.

The claim of the respondents arises under the third section of the Act of Congress of March 3rd, 1851, (9th Stat. at Large, 635), which reads as follows:—"The liability of the owner or owners of any ship or vessel, for any embezzlement, loss or destruction by the master, officers, mariners, passengers, or any other person or persons, of any property, goods or merchandize shipped or put on board of such ship or vessel, or for any loss, damage or injury by collision, or for any act, matter or thing, loss, damage or forfeiture, done, occasioned or incurred without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner or owners respectively, in such ship or vessel and her freight then pending."

1st. The manner in which the question was raised below seems to me novel. Assuming for the moment that the statute applies to the case, and that the respondents have by virtue thereof a right to reduce the plaintiff's recovery by proving that the whole loss by the collision exceeds the amount or value of their interest in the ship or vessel found in fault and in her freight then pending, and that the proof in reduction of damages may be given in the action brought to charge the owners, it would seem to follow that such proof should be given on the trial, or that if the Court see fit to try the question of liability and settle the rule or measure thereof in the first instance, then that such proof should be offered before the Commissioner to whom it is referred to take proofs of the amount of the damages for which a recovery is to be awarded.

The motion made in the District Court, however, seems to have been in the nature of an application to open the proofs in the cause after they were closed, and lèt in testimony which, if of any avail, must operate to modify the interlocutory decree already pronounced which awarded to the libellants a recovery of all the damages by them sustained, and if the motion contemplated a further hearing before the commissioner, a modification of such interlocutory decree would be necessary.

In this view the motion was plainly addressed to the discretion of the Court, and its denial, as an exercise of discretion, could not be claimed to be erroneous.

And again, if proofs on the subject were offered in the District Court and rejected, (on whatever ground and in whatever stage of the trial or proceedings) inasmuch as they would go not merely to a question of amount or matter of computation, but to a rule governing the recovery when and after all the material amounts were computed and ascertained, I perceive no reason why such proofs might not be offered in the Circuit Court on the appeal which has, if the appellant sees fit, many of the characteristics of a new trial. Doubtless the issue must be made below, and in some form the question of law should appear to have been before the Court below. But if in the Circuit Court it appears that the testimony ought not to have been rejected, the respondents would and must be permitted to give the proof in this Court.

The construction of the Act of Congress is, however, in a degree unsettled. The practice under it, in cases to which it applies, appears not to have been prescribed, nor is it established by any usage of the Court. It can hardly be deemed a fault if counsel under such circumstances failed to select the most orderly mode of raising the questions.

Besides I think the record shows that the course pursued had the sanction of the District Court, and although the granting of the motion would have required a modification of the interlocutory decree, and probably a further reference to take proofs of amounts, the Court no doubt had power first to settle the question of liability, next the amount of the libellants' loss, and then if any other fact necessary to fix the amount of recovery was wanting to make a further reference, the precise order of proceeding in this respect which that Court saw fit to pursue would not be interfered her. Indeed, when he did see her he did not report her. This neglect of duty he seeks to excuse by his belief that the pilot had himself then discovered her. It was his duty to report, and not to trust to his supposition or surmise, and this circumstance tends very strongly in my mind to the belief, founded on his own testimony, that he was not performing his duty in any respect. While on the other hand, as forcibly shown in the opinion, if the actual state of the weather just before the collision rendered it impossible to see the schooner, the steamer was in like fault in not proceeding, at a speed so moderate that when she did discover the schooner she could better control her own motions.

Upon the second question I find no little embarrassment.

The claim of the respondents arises under the third section of the Act of Congress of March 3rd, 1851, (9th Stat. at Large, 635), which reads as follows:—" The liability of the owner or owners of any ship or vessel, for any embezzlement, loss or destruction by the master, officers, mariners, passengers, or any other person or persons, of any property, goods or merchandize shipped or put on board of such ship or vessel, or for any loss, damage or injury by collision, or for any act, matter or thing, loss, damage or forfeiture, done, occasioned or incurred without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner or owners respectively, in such ship or vessel and her freight then pending."

1st. The manner in which the question was raised below seems to me novel. Assuming for the moment that the statute applies to the case, and that the respondents have by virtue thereof a right to reduce the plaintiff's recovery by proving that the whole loss by the collision exceeds the amount or value of their interest in the ship or vessel found in fault and in her freight then pending, and that the proof in reduction of damages may be given in the action brought to charge the owners, it would seem to follow that such proof should be given on the trial, or that if the Court see fit to try the question of liability and settle the rule or measure thereof in the first instance, then that such proof should be offered before the Commissioner to whom it is referred to take proofs of the amount of the damages for which a recovery is to be awarded.

The motion made in the District Court, however, seems to have been in the nature of an application to open the proofs in the cause after they were closed, and let in testimony which, if of any avail, must operate to modify the interlocutory decree already pronounced which awarded to the libellants a recovery of all the damages by them sustained, and if the motion contemplated a further hearing before the commissioner, a modification of such interlocutory decree would be necessary.

In this view the motion was plainly addressed to the discretion of the Court, and its denial, as an exercise of discretion, could not be claimed to be erroneous.

And again, if proofs on the subject were offered in the District Court and rejected, (on whatever ground and in whatever stage of the trial or proceedings) inasmuch as they would go not merely to a question of amount or matter of computation, but to a rule governing the recovery when and after all the material amounts were computed and ascertained, I perceive no reason why such proofs might not be offered in the Circuit Court on the appeal which has, if the appellant sees fit, many of the characteristics of a new trial. Doubtless the issue must be made below, and in some form the question of law should appear to have been before the Court below. But if in the Circuit Court it appears that the testimony ought not to have been rejected, the respondents would and must be permitted to give the proof in this Court.

The construction of the Act of Congress is, however, in a degree unsettled. The practice under it, in cases to which it applies, appears not to have been prescribed, nor is it established by any usage of the Court. It can hardly be deemed a fault if counsel under such circumstances failed to select the most orderly mode of raising the questions.

Besides I think the record shows that the course pursued had the sanction of the District Court, and although the granting of the motion would have required a modification of the interlocutory decree, and probably a further reference to take proofs of amounts, the Court no doubt had power first to settle the question of liability, next the amount of the libellants' loss, and then if any other fact necessary to fix the amount of recovery was wanting to make a further reference, the precise order of proceeding in this respect which that Court saw fit to pursue would not be interfered with on an appeal which would raise the whole question and all the questions which were raised and passed upon in the District Court.

Nor was the question disposed of there as a question of practice or matter of discretion. The agreement of counsel, the allowance of the motion there and the opinion of the Court, show that it was intended as a disposition of the subject on other grounds, and it was so disposed of.

And finally, on this point I have no doubt of the power of this Court on appeal, in view of the fact that the question was distinctly raised below, to entertain it here, and to deal with it as freely, according to what may be found due to the rights of the respondents, as it could if the testimony had been offered on the trial in the first instance, and been there rejected.

True, on the appeal the proofs were not formally offered, but the question of their admissibility, and their influence upon the recovery, were argued at great length, and the right of the respondents to give such proof and take the benefit thereof was most earnestly insisted upon. If, therefore, such proofs were proper, and would avail to reduce the liability of the respondents in this suit, the Court can give relief and ought to do so. I must therefore treat the question as open, and as fully as it was considered in the District Court.

2. It is very strongly urged that the Act of Congress has no application to the claim of the owners of another vessel, or of the cargo of another vessel, injured by a collision with a ship which is in fault in producing it; that the claim of the libellants in this case is not within the statute, and therefore the proofs proposed to be given, and the facts they would establish, are irrelevant, and cannot affect the amount of their recovery.

The special circumstances which led to an effort by ship owners to procure an Act of Congress in modification of their common law liability, which resulted in the passage of the Act in question, are of some significance.

They were to some extent within my own personal knowledge. They were very notorious, and are referred to in the Debates in the Senate of the United States on the passage of the bill.

Shortly before the subject was brought to the attention of Congress, the packet ship Henry Clay, a large, costly and nearly new ship, lying at the wharf in the port of New York, having nearly completed her lading and being bound for Europe, took fire from some cause and was burned, with a cargo already laden amounting in value according to my recollection, to half a million of dollars. Her owners, being losers to a very large amount by the burning of the ship, were proceeded against by owners of cargo to compel payment to them of its value. In one of the actions I was myself of counsel, and it was strenuously insisted that even without any such statutes as exist in England, the owners could not be charged upon the usual rule of liability of common carriers at common law. No proof of actual fault or negligence, except so far as the occurrence of the fire in the ship might warrant such inference, was given or attempted. The owners were held liable. Pending that action I was aware, through the distinguished counsel for the then defendants, that an effort was made to procure some legislation from Congress to soften the rigor of the rule declared in that case.

Some years before the burning of the Henry Clay, and in the night of the 13th of January, 1840, the steamboat Lexington was burned upon Long Island Sound, and the disaster was accompanied by a painful loss of life and the destruction of a large amount of property. Litigation ensued, and the liability of the owners was declared in the *New Jersey Steam Navigation Company* vs. *The Merchants Bank*, in the Supreme Court of the United States, (see 6 *Howard*, 344) decided in 1848.

Both of these disasters, and the alleged hardships of the law against ship owners as common carriers, were commented upon in the debates which were had upon the Act now in question. And an examination of those debates show, that it was the stringent rule of the common law which made common carriers of property liable for all losses, (except such as were caused by the act of God or the public enemies,) however free from actual fault or negligence, that was the subject of comment; and the apparent purpose, so far as it may be gathered from those debates, was to relax that rule.

It is therefore a further significant circumstance, that in those debates nothing is said of injuries to other vessels, or the liability of ship owners as principals for the tortious negligence of their ship masters, officers or crews, as their servants, by which the property of persons in no wise entrusted to them received injury. Nor was the rule of the common law which makes the master liable for the negligence of his servant in his business, the subject of review, criticism or comment.

These circumstances, by no means controlling, are nevertheless appropriately referred to in reviewing the act, and may throw light upon its meaning, if otherwise such meaning and the intent of the Legislature be doubtful.

The act itself begins with a declaration that ship owners shall not be liable for loss or damage by fire to any goods or merchandise whatever, shipped, taken in, or put on board, unless such fire is caused by the design or neglect of the owner.

This has no other operation than to affect their relations as common carriers.

The proviso to that section, that "nothing in *this act* shall prevent the parties from making such contract as they please, extending or limiting the liability of ship owners" is some indication that Congress believed that they were dealing with a question of liability which might be the subject of a contract, not with a liability for tortious negligence to parties who stood, and who could stand, in no relation of contract whatever with such owners. The proviso is annexed apparently to the first section, but it is noticeable that the language is not, "nothing in this section" but "nothing in *this act*," indicating that the proviso was intended to apply to the whole act. The proviso was introduced as an amendment after the act was reported to the Senate, and the inference that a relation which might appropriately be the subject of a prior contract was the subject of the entire act, is by no means unwarranted.

The second section appertains solely to the duty of shippers, to the master and owners of the ship in the relation of the latter to the former as carriers, and the liability affected thereby is expressly described as their liability "as carriers thereof."

The third section is in the terms already above recited. It must be conceded that it contains terms which, viewed apart from the residue of the act, are broad enough to include injury to other vessels by collision. This fact is not conclusive. In the construction of statutes as well as private instruments and contracts, general words are restricted in their meaning by the subject matter of the statute or instrument, the context, the apparent intent; and in an enumeration of particulars followed by general terms a restriction of the latter to cases or things *ejusdem generis* is according to settled rule.

See *Moore* vs. *Am. Trans. Co.*, 24 *How.* 36. *Regina* vs. *Reed*, 28 *Eng. L. & E.*, 133. *Regina* vs. *Nevill* 8 *Q. B.*, 452. *Sandiman* vs. *Breach*, 7. *Barn. and Cres.*, 96. *Ryegate* vs. *Wardsboro*, 30, *Vt.* 746. *Simonds* vs. *Powers*, 28 *Vt.* 354.

And in construing any particular clause or words of a statute it is especially necessary to examine and consider the whole statute, and gather if possible from the whole the intention of the Legislature.

Now it has already been seen that the first and second sections have sole reference to the relations of ship owners as common carriers. The fourth section as clearly affects them in that relation only. Thus, it provides that if any such loss, embezzlement or destruction shall be suffered by several freighters or owners of goods, wares or merchandize, or any property whatsoever on the same voyage, and the whole value of the ship or vessel and her freight for the voyage shall not be sufficient to make compensation to each of them, they shall receive compensation * * * in proportion to their respective losses. And for that purpose such freighters and owners of the property and the ship-owners, or any of them, may take the appropriate proceedings in any Court for apportioning the sum to which the ship-owners are liable * * And the ship-owners are authorized to transfer their interest in the vessel or freight for the benefit of such claimants to a trustee to be appointed, &c., * * from and after which transfer all claims and proceedings against the owner or owners shall cease.

Here the terms, goods, wares or merchandize or any property whatever, are equivalent to the words in the third section, "any property, goods or merchandize" and of the words, "goods, wares merchandize or other property" in the sixth section; in each of which they relate solely to property of some kind put on board the vessel. And the phrase is added "on the same voyage" to confine the participation in the apportionment to the freighters for a single voyage, and not to permit the ship-owners to bring into the compensation losses sustained on prior or other voyages.

The limitation of the application of the fourth section is very important in its bearing upon the question in another aspect, but here I state it simply in order to show that such is its proper construction; it may be possible to select a portion of the words to give color to a more comprehensive meaning, but freighters or owners of goods, wares or merchandize or any property whatever, on the same voyage, could not clearly include the owner of another ship pursuing a voyage in another direction, sunk by collision. And a "loss suffered by" several freighters and owners of property on the same voyage, is wholly inapt to include the loss sustained by the owner of another ship on another voyage.

This limitation of the application to property on board the ship, or for which the ship owners would be liable as common carriers by the common law, has been affirmed by Mr. Justice Grier in *Barnes* vs. *Steamship Co.*, (*Philadelphia Legal Intelligencer*, *June* 19, 1868,) and by the decision of Judge Merrick, (14 *Grey* 288) in Massachusetts.

The fifth section places charterers in the same situation as ship owners, when the former man, victual and navigate the ships.

The sixth excludes the idea that the act was intended to exonorate the master, officers and mariners from liability for their own fault or negligence.

The seventh relates solely to persons shipping dangerous or inflammable articles on board a vessel taking a cargo for various persons on freight without giving a notice describing their nature and character, and imposes a penalty. And the last section exempts certain craft from the operation of the act.

A perusal of the entire act, a consideration of its apparent design, its general purport being applicable to ship owners as common carriers only, compels me to conclude that it was their relation as such carriers which Congress alone had in view.

If it is asked, what then do the words "for any loss, damage, or injury by collision," "or for any act, matter, or thing, loss, damage or forfeiture, done, occasioned or suffered," mean? I answer, that having the responsibility of carrier at the common law in view, a responsibility which subjected the ship owner for every loss not caused by the act of God, or the public enemies, some such words were necessary to cover all the grounds of their liability as carriers.

It was not enough to specify "embezzlement, loss, or destruction by the master, officers, mariners, passengers or other persons." Collison and many other acts and things might occasion loss or injury to property entrusted to them as carriers, for which but for these words they would be responsible to the full amount. The collision in the case now under consideration furnishes an illustration, for the City of Norwich having on board a very valuable cargo, that cargo was lost by the collision and that loss would be within the terms of the section.

Not only so, collision and manv other acts, matters, things, losses, damage and injury might happen, be "done, occasioned or incurred" without any fault or negligence either of the ship owners or their masters or mariners, and be due solely to the fault or negligence of other persons, or be an accident in such sense that faulty negligence could be imputed to no one, and yet the ship owners would be liable. These classes of cases are therefore provided for and are clearly within the design and object of the statute.

There is therefore a large field for the operation of all the words of the third section without extending their meaning to an injury to another vessel or goods on board thereof.

There is also great force in the argument of the counsel for the libellants founded upon the provisions of the English statute in relation to ship owners.

The Statute of 53 George III. was before the Congres of the United States when this act was passed. It not only so appears by the debates, but it would reasonably be so inferred. The discussion proceeded largely upon the policy of England and of this country, in its relations to other maritime nations, of encouraging the building and employment of ships, by relaxing the severe rule of liability of carriers at the common law. The English statute in terms extended beyond that and applied the limitation of responsibility in very terms to any loss or damage, "which may happen to any other ship or vessel or to any goods, wares, merchandize or other thing being in or on board of any other ship or vessel"—and Congress rejected this sentence altogether, and employed general expressions almost identical with the previous English statute which related solely to the liability of ship owners as carriers.

It is inconceivable that if this liability for injury to another ship or vessel or goods, &c., on board another vessel, was intended to be embraced in the Act, those clear and explicit terms employed in the English Act should have been discarded. The rejection of those words cannot be otherwise accounted for, except it be upon a supposition dishonorable to the framers of the law, and which the Court cannot for a moment indulge, viz.:—that there was a covert design to employ words which might have a similar operation, and their meaning be so concealed that the bill might be passed by Congress in ignorance of the design.

The words, loss, damage or injury by collision, and the general words that follow have, therefore, by just construction, the same meaning and effect as they would if the word "thereto" had been used in connection therewith, viz,:—"for any loss, damage or injury thereto by collision," &c.

Again, if I am right, or if Mr. Justice Grier and the Supreme Court of Massachusetts are right, in holding that the fourth section of the act applies only to freighters and owners of goods and property on board the ship, and therefore applies only to the relation of the ship owners to those whose goods and property they assume to carry, then it seems to me inevitable that the whole Act, the third section included, applies only to the same relations, and for this reason,—

Congress was in the act of limiting the responsibility of ship owners, and by the third section alone had declared that limitation for all the cases to which it should apply. They fixed its extent, viz.: the amount or value of the interest of such owner or owners respectively in such ship or vessel and her freight then pending.

To provide for carrying this limitation into effect and to make it operate equitably among all parties suffering losses within the act, they declare, first, that each shall receive in proportion to his loss, and that proceedings for apportioning the amount may be taken by either party. It is not possible that it was intended to include in the limitation of the amount to be recovered, owners of another vessel injured by a collision, and yet exclude them from the benefit of the apportionment provided in this fourth section.

Again, this fourth section provides that the ship owners may transfer their interest in the ship and freight to a trustee, and after such transfer all claims and proceedings against such owners shall cease. How then shall the limitations be made to operate in their favor as against owners of another ship (if they are included in the third section,) when such owners are not to become beneficiaries under the trust created pursuant to the fourth.

A construction which makes the third section apply to an injury done to another vessel, or the goods on board of another vessel, by a collision, cannot stand with the fourth section so construed, or any view of justice or equity, nor in any consistency with the principle of the act itself, viz.: the limitation of the ship owners' liability to the amount of his interest.

I have not been unmindful that dicta are found in some cases cited by counsel which assume that the Statute in question does include a case of injury to another vessel by collision therewith. But in none was that the point in judgment, or if incidentally involved was the question raised or discussed. Those dicta are chiefly in the words of the statute itself, and in truth furnish no aid to its true construction, nor do they decide the question I have considered.

Without protracting the discussion already too prolix, I am constrained to say the Act of Congress relied upon by the counsel for the respondents has no application to the injury received by the libellants in this case, and therefore that the proofs proposed to be given were wholly irrelevant, and could have no influence upon the decree which it was the duty of the District Court to make.

3. The conclusion which I have reached leads to an affirmance of the decree, though upon different grounds from those which led the District Court to reject the evidence offered. It is therefore not necessary that I should express an opinion upon the question whether this Court as a Court of Admiralty has powers or jurisdiction adequate to give full effect to the Act of Congress referred to.

If Congress had declared that the respondents should not be liable for losses sustained by the collision except to the amount of their interest in the vessel in fault and her freight then pending, no court, whether of Admiralty or Law or Equity, could properly make a decree which in terms subjected them to a larger liability and thereby practically nullify the statute.

Under the similar English Statute even the Courts of Law have regarded this limitation as prescribing the rule or measure of damages in actions on the case when the liability to a single plaintiff was before the Court, though no such case is cited where losses were sustained by other parties which were sought to be brought into the computation.

Cannan vs. *Meaburn*, 1 *Bing*, 465. *Wilson* vs. *Dickson*, 2 *Barn. & Ald.*, 2. *Brown* vs. *Wilkinson*, 15 *Mees. & Welsb.* 390.

And it cannot be doubted that in a case to which the statute applies, if several libels were filed in the Court of Admiralty by different claimants for losses sustained, or one libel was filed on behalf of several such claimants, that Court has ample power to give full effect to the statute as against such libellants, so far at least as to refuse a decree which should subject the respondents to a larger liability to all those libellants than the Act of Congress declares.

The Richmond, 3 *Hagg*, 431. *The Benares*, 1 *Eng.*, *L & Eq.*, 637. *The Dundee*, 1 *Hagg*, 109; *Gale* vs. *Laurie*, 5 *B & C.*, 156.

In England in *Dobre* vs. *Schroder*, (2 *Mylne and Craig*, 488 and 6 *Sim.* 291,) after two separate actions at law had been separately prosecuted to verdicts, the Court of Chancery entertained a bill for the apportionment of the value of the vessel, &c., between the two plaintiffs and the limitation of the owners' responsibility to that value.

A resort to a Court of Equity may be necessary under this Act of Congress to make such an apportionment if the party seeking it desires to bring into view losses sustained by all, and yet a libellant in Admiralty would have no ground of complaint if, having chosen to go into that Court, the respondent were permitted to prove any facts which, as matter of law, operated to reduce the amount of recovery. As between him and the respondent such proof might furnish a measure of the amount to which he was entitled, and an assessment made in conformity therewith might be conclusive between the parties although no third person would be affected thereby.

If in this view the statute could be held to warrant the application of the statute in each case and between any parties, it might not concern a particular libellant to have other parties before the Court, provided he is himself willing to take the hazard of such proofs as the respondent may give of the aggregate amount of the losses, and the same might be true of the respondent, if he prefers to try the question as to each claimant.

It must of course be conceded that whatever rights a party may have, and whether given by statute or otherwise, they are to be asserted in due and proper form and before the proper tribunal. But it cannot, I think, be true that a defendant must be made to bear a liability to which a valid statute declares he shall not be subject, upon any idea that there is no Court which can administer the statute. It were better to say if there is no Court which can give a judgment or decree in favor of the claimant without violating the statute, then no decree or judgment can be rendered.

And if it were clear by reason of the number of claimants who have sustained losses and their residence in various states, there is no tribunal which can obtain jurisdiction of all, it would be plausible, at least, to say that the Court is compelled to proceed with the parties of whom they have jurisdiction, and render justice as between them upon all the proofs either may offer bearing on the liability according to the limitation which the statute has declared.

The decree must be affirmed.